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107-13 CIVIL LAW DEPOSITION
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East Poplar Oil Field

DEPOSITION - DONNA WH

Region 8



13608

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

CARY G. YOUPEE, et al.,

Plaintiffs,

vs.

MURPHY OIL USA, INC., et al.,

Defendants.

Cause No. CV 98-108-BLG-JDS

Judge Jack D. Shanstrom

MESA PETROLEUM and PIONEER
NATURAL RESOURCES, USA, INC.,

Defendants/
Third Party Plaintiffs &
Cross Plaintiffs,

vs.

AMARCO RESOURCES CORP.
BESTWAY INC.; WESTDALE
PETROLEUM INC.; and THE
PRUDENTIAL GROUP,

Third Party Defendants,

vs.

JOHN DOES 4-50,

Cross-Defendants.

DEPOSITION

OF

DONNA WHITMER

TIME: Tuesday, June 12, 2001 at 10:26 a.m.

PLACE: Sherman Motor Inn, 200 East Main, Wolf Point, MT

Joann D. Heser
Official Court Reporter
Fifteenth Judicial District
Roosevelt County Courthouse
Wolf Point, Montana 59201
Ph. (406) 653-6272
Home: (406) 525-3712

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Warren Whitmer

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INDEX

DEPONENT:

DONNA WHITMER:

	<u>Page</u>
EXAMINATION BY MR. FAGAN	4
EXAMINATION BY MR. ROSS	45
EXAMINATION BY MR. STERUP	47
EXAMINATION BY MR. WEBSTER	51
CERTIFICATE OF COURT REPORTER	59
DEPONENT'S CERTIFICATE	60
CORRECTIONS TO DEPOSITION	61

EXHIBITS

	<u>Page</u>
27 Chemical Analysis Water Reports, Donna Buckles-Whitmer	22
28 Water Analysis from Energy Laboratories, Donna Buckles	24
29 CFCD Mini-Grant Application, North 40 Enterprise Owner, Donna Buckles-Whitmer	34
30 Order Approving Will & Decree of Distribution Estate of Austin Reginald Scott Buckles, Sr.	45
31 Service in Action, Crop Tolerance to Soil Salinity . .	47

1 BE IT REMEMBERED: That the oral deposition of DONNA
2 WHITMER was taken at 10:26 a.m. on the 12th day of June,
3 2001 at the Sherman Motor Inn, 200 East Main, Wolf Point,
4 Montana, with the appearances of counsel hereinbefore
5 noted, before Joann D. Hesel, Official Court Reporter and
6 Notary Public for the State of Montana.

7 The following proceedings were had:

8 -----

9 Whereupon,

10 DONNA WHITMER,

11 called for examination, and being first duly sworn upon her
12 oath, testified as follows:

13 EXAMINATION BY MR. FAGAN:

14 Q Do you mind if I call you Donna?

15 A Nope.

16 Q My name is Gerry Fagan, and I represent an oil
17 company, Marathon Oil. Have you ever been deposed before?

18 A No.

19 Q Do you understand -- has Mr. Dolan been able to
20 explain to you the process, how this works?

21 A Yes, pretty much. For the most part.

22 Q And you understand you're under oath?

23 A Yes.

24 Q And that you're supposed to tell the truth, that
25 we can use any of the statements we make today at trial if
26 need be. And if I ask any questions that you don't
27 understand or are confusing, just stop me and make me do it
28 right. I want to make sure you understand everything.

1 A Alright.

2 Q The notice of deposition that went out for your
3 deposition. Did you receive that or look it over?

4 A Yes, I did.

5 Q And it asked you to bring any documents that might
6 be relevant, and did you do that?

7 A Um, no. Dick had them all.

8 Q So you didn't bring anything new with you today?

9 A No. We have been submitting the documents
10 periodically.

11 Q What's your occupation, Donna?

12 A I'm the distance learning coordinator for the Fort
13 Peck Community College.

14 Q What kind of learning coordinator?

15 A Distance learning coordinator.

16 Q And what is that?

17 A Well, we have distance learning courses coming in,
18 some degree programs coming in from different institutions
19 in the state. We use an interactive television system. We
20 also have -- extend any -- they call it extended studies or
21 professional development. I coordinate the workshops,
22 seminars for the college. I also work with the teacher
23 training program. I've been there since 1994.

24 Q What's your educational background?

25 A I have a bachelor's degree in business and art
26 from Eastern Montana College in Billings.

27 Q What members of your family are involved in this
28 lawsuit, in addition to yourself?

1 A My husband and I.

2 Q Are you related to any other plaintiffs in this
3 case?

4 A No. Not to my knowledge. We have had difficulty
5 trying to determine our family tree.

6 Q The ownership of the property that your property's
7 involved in this case, how do you own that?

8 A My father left it to me when he passed away in
9 1983.

10 Q Is it a fee interest?

11 A No. I own it. (Mr. Dolan indicates it is a fee.)
12 Is that a fee? Sorry.

13 Q It's a legal term, so. How long have you been on
14 that property?

15 A Since 1994. We moved on in November of '94.

16 Q We have this -- right in front of you is
17 Exhibit A, which is a map of the area. We've been having
18 everybody put their name on where they actually are
19 located. Could you do that for us, please?

20 (OFF THE RECORD FROM 10:39 A.M. TO 10:45 A.M.)

21 Q (By Mr. Fagan) We're back on the record then? So
22 we were just able to determine where you're located at and
23 everybody's comfortable with that, I think. Did you say
24 you moved on the property in 1994?

25 A (By Deponent) Yes.

26 Q Where did you live before that?

27 A I grew up here, and I moved for several years, and
28 I moved back on the reservation. I'm an enrolled member,

1 and I lived with my sister and my mother; and then Warren
2 and I decided to homestead up there and got married.

3 Q When you lived with your sister and your mother,
4 where was that located at?

5 A My sister is Audrey Kirn. She lives just north of
6 us about four miles. And my mother lives in town in
7 Poplar.

8 Q So Audrey's property, is it in the area in front
9 of you on the map?

10 A Yes.

11 Q And you lived for how long with Audrey?

12 A Probably four years.

13 Q And is that the property you lived at right before
14 you went to the property we've just discussed?

15 A Yes.

16 Q And you and Warren lived with Audrey?

17 A No. Just me.

18 Q And you're still on the property today?

19 A Yes, we are.

20 Q The property that we discussed?

21 A Yes.

22 Q How many water wells are on that property?

23 A Just one.

24 Q Where is the well on the property in relation to
25 your house?

26 A It's about probably -- you know, I'm terrible with
27 feet, but I think it's like 50 feet, a little southwest of
28 our home.

1 Q And where is the septic system located?

2 A It goes out north and west.

3 Q When was the well on your property drilled?

4 A It was drilled October of '94.

5 Q And is that when you moved onto the property?

6 A No, we moved on in November of '94. We waited --
7 when we submitted our application to have a well drilled,
8 we made a statement on that application that we would not
9 start any construction activities on the land until we knew
10 that our water was potable.

11 Q So you had the well drilled, then you moved onto
12 the property?

13 A After we got the analysis back.

14 Q And did you construct a house on the property
15 then?

16 A We moved a trailer home onto the property.

17 Q So you received an analysis on the well when it
18 was drilled?

19 A Yes, we did.

20 Q And who was that from?

21 A Rod Bruner with the Indian Health Service.

22 Q And what did it say?

23 A Well, it basically said that we had potable water.
24 We were able to drink the water.

25 Q Is that all it said or did they give you an
26 analysis of different chemicals that may be in the water?

27 A Yes, it did, and. . . (Confers with her attorney
28 briefly.)

1 Q And that was probably performed in November?

2 A I think the results got back the first of November
3 of 1994.

4 Q What was the water like when you first moved on
5 the property then?

6 A It was clearer, we were able to drink it. It was
7 wonderful going to the faucet and turning on the water and
8 getting clear, drinkable water.

9 Q Did it have any taste to it?

10 A Not at that particular point. Never bothered ----

11 -

12 Q No salty taste?

13 A No.

14 Q How about an odor?

15 A No.

16 Q Was there any coloration in it?

17 A No.

18 Q Any rust color? any orange color?

19 A There was some, but very minimal.

20 Q Did it affect your faucets or pipes at all?

21 A Um, like I said, there was some yellow to it. I
22 don't know. We never had to have anything replaced at that
23 particular point.

24 Q Did you notice a film on the water?

25 A Not at that particular time.

26 Q And you used it for all uses?

27 A All uses.

28 Q Including household and landscaping and gardening

1 and those kind of things?

2 A Yes.

3 Q With no problems?

4 A No problems. We have -- we had put in underground
5 sprinklers in our garden, and our garden's about 20 by 160.
6 And also in our home we have 5000 square feet of sod that
7 we put around our home in our landscaping; and, um, my
8 husband was in the landscaping business for thirty some
9 years, and so he really worked with the land. And because
10 my father left it to me, I really felt that we needed to
11 take care of the land, and we wanted to be good stewards of
12 the land, and so we spent a lot of time, energy and money.
13 We put -- you know, put all of our money into this -- the
14 buildings, the landscaping, my husband went out and cut
15 down the posts for our total fence that goes around
16 eighteen acres for our livestock, we put a barn in, we took
17 down a building and brought -- it was an old wheat storage
18 building, and we brought it down to our land and built a
19 shop garage, barn connection. And so we put a lot of time
20 and energy in this property because we knew we had good
21 water at the time.

22 Q And this is all starting in November of '94?

23 A Yes.

24 Q When did you start doing the gardening and
25 landscaping?

26 A Oh, our best garden was the summer of '95. We had
27 a beautiful garden. And Warren and I both put the
28 underground sprinklers in, and we've had to replace a lot

1 of the heads since then; and our garden is not even a small
2 percentage of the quality we had in '95.

3 Q So I take it the water changed at some point?

4 A Yes, it did.

5 Q When was that?

6 A My husband left because we weren't able to start
7 our greenhouse, which was in our five year plan that was
8 submitted in 1995 when we formed a partnership with our
9 son-in-law. And we weren't able to start that business
10 because we didn't have the funds. We had invested so much
11 money -- of our money into what -- you know, just getting
12 the homestead started, that we didn't have sufficient funds
13 to start that at the time. And so he was travelling to
14 Billings. He had a business, tree trimming business, in
15 Billings, and would go to Billings during the summer and
16 work on these people that have had him work in their yards
17 for thirty some years. And when he came back in May of
18 '97, that's when he noticed. I had been drinking the water
19 and I -- you know, I noticed some taste but it wasn't
20 really offensive to me at the time, so I continued drinking
21 it. But when he came home in May of '97 for a visit and we
22 started putting our garden in and, etc., that's when we
23 noticed a definite change in the water, that there was
24 definitely an offensive smell. And, I mean, it really was
25 apparent in like one bathroom and the kitchen.

26 Q You said May of '97?

27 A Um-hm. (Indicates yes.)

28 Q So you had lived on the property for approximately

1 a year and a half?

2 A Um-hm. (Deponent indicates yes.)

3 Q And was it a gradual change in that year and a
4 half?

5 A No.

6 Q It was all of a sudden?

7 A It was -- Well, it probably was, but I didn't
8 notice it using it every day. When he came back, he
9 noticed it.

10 Q Had Warren been gone most of that year and a half?

11 A No, he was gone down to Billings and then back.
12 He would travel back and forth to Billings to take care of
13 his business down there.

14 Q But he was gone more often than he was at the
15 home?

16 A No, I would say that he was at the home, too, but
17 that's when we noticed the big drastic change in the
18 quality of the water was in May of '97.

19 Q Just so I understand this, you're not saying it's
20 a drastic change that happened on, say, May 1, 1997. It
21 happened a little bit by little bit between November of ---
22 --

23 A Well, it must of, but I wasn't aware of it. You
24 know, we did smell a little bit of odor -- there was an
25 odor to it at some point, but it was only in one area of
26 the house, in the back bedroom by -- our bedroom. And, ah
27 -----

28 Q Water odor?

1. A Yes. The water stunk.

2 Q But only in the back of your bedroom?

3 A Yes, at that particular time. And it wasn't all
4 the time. It would come and go.

5 Q What was the smell like?

6 A I have no idea. It was probably close to a
7 sulphur type.

8 Q Rotten eggs kind of thing?

9 A Rotten egg, yeah.

10 Q And how about the taste of the water?

11 A The taste -- we started -- we never used it out of
12 that -- or I didn't use the water out of that bathroom
13 during the time that it stunk. But, like I said, it didn't
14 stink all the time. There wasn't that major odor, and so.

15 Q Did you notice a difference in quality between
16 different sources in your house for the water, like, say,
17 the kitchen versus the bathroom?

18 A Well, at that particular time, because of that
19 odor, I would say, yes, we did notice that the kitchen --
20 We still continued to cook with that water and to drink it
21 until May of '97; and that's when we decided that we didn't
22 want to jeopardize our health and continue drinking it
23 because we didn't know why it was -- the odor was there,
24 and also the water wasn't real clear, and, um, I saw more
25 rust on the, you know, like the tubs and the sinks and in
26 my dishwasher.

27 Q So you thought the water might be different in the
28 kitchen versus the bathroom, is that correct, the quality?

1. A Just because of the smell. And we never had -----

2 Q What do you think would cause that?

3 A I have no idea.

4 Q How about the color of it, was it different
5 between the kitchen and the bathroom?

6 A No, because -----

7 Q More rust in one versus another?

8 A Well, I think you'd be more aware of the rust in
9 the tubs than in the sinks in the kitchen because you use
10 the sinks in the kitchen more. You know, you're there
11 more. And so, I would say, yes, that I did notice more in
12 the bathroom.

13 Q I believe it was a mobile home you were living in?

14 A Yes.

15 Q How old a mobile home was it?

16 A That was a -- the initial trailer that we moved
17 into was a -- I think it was a '75, and now we're living in
18 a '95.

19 Q And when did you replace the original mobile home?

20 A Um, when my daughter moved -- my daughter and her
21 husband moved on the property with us and lived there for
22 approximately two years. And so it would be '97 when we
23 took over their trailer, sold our older trailer, and, ah --
24 but theirs was a brand new trailer in '95.

25 Q How was the plumbing in the original trailer when
26 you lived in it? Could that have been the source of the
27 difference between the kitchen and the bathroom?

28 A No, because we smell it in our new one. So that -

1 - the condition of the pipes in the old trailer would not
2 have caused this if we're smelling the same odor in the new
3 trailer.

4 Q When did you change the use of your water then?
5 '97?

6 A Yes.

7 Q And you quit drinking it in May of '97, is that
8 correct?

9 A Yes.

10 Q And that was just because of the taste and the
11 odor?

12 A Right.

13 Q Did you ever notice any film in the water?

14 A We do now more recently.

15 Q When did you first notice that?

16 A Um, you know, we had a waterer that -- a stock
17 waterer that we put out into the barn area for our
18 livestock; and that was never, ever clear, except for
19 possibly the first day. And, um, you know, we really never
20 made specific notations about the actual -- you know,
21 because we don't have water setting any other place in our
22 property except in the -- that water tank out in the barn.
23 And that's when I noticed it is when the water sat for
24 awhile.

25 Q But you said the water you put out for your
26 livestock was never clear going back to 1994?

27 A We never put that in in '94. That was put in
28 later. And I think that actually we smelled -- the -- it

1. was around -- I can't even remember the date that we put in
2 the water system, but, ah -----

3 Q This was a water system for the livestock?

4 A Um-hm. (Deponent indicates yes.) We ran a line
5 to them for a out-stock waterer.

6 Q Coming from the water well on your property?

7 A Yes. The same well.

8 Q And when you did that, that water was never clear
9 for the livestock?

10 A Right.

11 Q But you're not sure when the -----

12 A I'm not sure of the date. Um, I would say --
13 let's see, this is -- maybe '98.

14 Q So this was after you saw the difference in the
15 water and quit drinking it yourself?

16 A Right.

17 Q But you thought at the time, it would still be
18 okay for livestock to drink?

19 A We did. We hoped.

20 Q Did they drink it?

21 A Yes.

22 Q Do they drink it today?

23 A Yes.

24 Q Did the water change cause any damage to any of
25 your pipes in your trailer home?

26 A We never had them checked, but I know that, you
27 know, for instance, that waterer, we put -- had to replace
28 a plastic floater -- that's about this big -- into the tank

1 twice in one year. Um, we've never had any plumber come in
2 to investigate our pipes in our new trailer. And, um, so
3 I'm not knowledgeable about that.

4 Q How about the landscaping and garden, how is that
5 affected?

6 A Oh, it's -- our lawn quality has diminished
7 tremendously. If you look -- and the sod that we brought
8 in, we laid it ourselves. We did rock around the house
9 because we didn't want any rust getting on the home. So
10 our total landscaping was planned by my husband, and it's
11 a beautiful job. And now -- and when we set the sod in, we
12 got a guy up from Sidney on a Friday, and we put it on
13 Saturday and Sunday that same week, and it was just
14 beautiful green clear down to the ground. And, now, it is
15 yellow and brown, and the only thing green out there is the
16 very tips of the grass.

17 Q And that was in 1995 that you put the sod in and
18 the landscaping?

19 A I've got to think about the dates.

20 Q I think you moved in November of '94, right, and -

21 ----

22 A Yes, I think it was in '95, the summer of '95 or
23 the summer of '96.

24 Q When did you first notice the gardening and
25 landscaping deteriorating?

26 A Ninety-six.

27 Q So '95 it went in and it was nice that year?

28 A Um-hm. (Deponent indicates yes.)

1. Q The next year it wasn't nice. Is that correct?

2 A Well, we still had a nice garden, but our bean
3 production was way down. And my husband did find out that,
4 you know, that there is -- that after the fact, we find out
5 that there are plants that are more susceptible to salt.
6 And we've never had a nice bean crop since that time. It
7 has decreased -----

8 Q So how many different crops do you grow on that
9 property?

10 A We have -- we have approximately three to four
11 hundred plants of potatoes. We have corn, we have beans
12 when we can get them. We also have, like, onions, squash
13 plants. Asparagus -- we just got this year; we put it in,
14 we're trying it, we're not sure how it's going to react.
15 But also we have cucumbers and -----

16 Q Are these for your own use or for commercial uses?

17 A We share with our family and also for us. We can.
18 We have a great system. We cut off the corn off the cob,
19 and we vacuum pack it. So we've invested a lot of money to
20 have this garden and to provide us and our family with
21 fresh produce throughout the year.

22 Q So it's just for family use, not -- you're not re-
23 selling it to anybody?

24 A No.

25 Q And do you irrigate it still with the water from
26 the well?

27 A Yes, we do.

28 Q And has your production gone down over the last

1 five years?

2 A Yes. As a matter of fact, you know, last year, we
3 had a pretty good crop, but it was because we had early --
4 early rains, and so our plants got big enough and strong
5 enough. And so we had a better crop last year than we had
6 in the last -- since 1995.

7 Q Is that the best crop you've had since 1995?

8 A No. Oh, yes, it is.

9 Q So it'd be the 2000 crop?

10 A Um-hm. (Deponent indicates yes.)

11 Q And 1995 would be the first crop you had?

12 A Yes.

13 Q So was the 2000 crop the best one you've had?

14 A No. Not -- the '95 -----

15 Q The '95 was best than 2000's the next?

16 A Um-hm. (Deponent indicates yes.) When our water
17 was still good and we were still drinking it, we watered
18 our garden and our garden was beautiful.

19 Q So last year you got a lot of rainfall?

20 A Yeah. We had a lot of rain last year, and so our
21 garden was better than it had been.

22 Q How about 1995? How was the rainfall that year?

23 A Um, I don't think it was much that I recall. We
24 had to water a lot.

25 Q How about in the years inbetween '95, '97?

26 A The years in between, we still never had the early
27 rain that we had last year to my knowledge.

28 Q How's your crop so far this year?

1. A Um, we've got a lot of potatoes. Our corn didn't
2 even come up, and our beans are looking real sad.

3 Q Have you had any soil tests run on your property
4 out there?

5 A Soil, no. My husband has, though -- he's done a
6 lot of work and preparation of the soil to plant a garden.
7 Every year he puts in -- mixes in the fertilizer and
8 everything with it, and he prepares the land. And we've
9 done that each year. And, ah, you know, looking at our
10 potato plants right now, last night, we were out there
11 pulling weeds and they are beautiful. But we have no corn,
12 and our beans look real sick.

13 Q The potato crop was a good one?

14 A Um-hm. (Deponent indicates yes.)

15 Q Is it better than last year?

16 A Um, maybe not any difference at this particular
17 stage of growth. No, I don't think so.

18 Q Do you know neighbors or other folks around this
19 area that grow beans or corn?

20 A No, I do not.

21 Q You don't know people -----

22 A I don't know -- I'm sure I, you know, know people
23 that have it, but I haven't specifically seen their gardens
24 or anything.

25 Q Is that the kind of crop that grows very well up
26 here normally, do you know? Beans or corn?

27 A Oh, yes, we've always been able to, um-hm.
28 (Deponent indicates yes.)

1 Q How many tests have you had performed on the water
2 well itself, the quality?

3 A I was looking at that last night, and I'm pretty
4 sure that we had that initial one in '94; and then we've
5 had -- I've found six, but I think approximately --
6 There's approximately six water analyses that we have in
7 our possession, but there could be seven or eight. I don't
8 know if I found them all last night. I thought that we
9 were coming tomorrow morning, and so, you know, my
10 preparation wasn't as good as it would have been.

11 Q So there -- are some of these -- Some of these
12 documents about the water tests, they haven't been produced
13 yet to Mr. Dolan or to -----

14 MR. DOLAN: No. About the water tests?

15 MR. FAGAN: Yeah. You've made seven or eight tests?

16 MR. DOLAN: Oh, I haven't got seven or eight. Let's go off
17 the record.

18 (OFF THE RECORD FROM 11:05 A.M. TO 11:07 A.M.)

19 MR. WEBSTER: We're back on the record now after some
20 confusion about how many water tests there have been. What
21 I show in some notes that I have taken is that there was a
22 test in November of '94 apparently done by the IHS, a test
23 done in February of '95 by Energy Labs, and I assume that
24 also was the IHS. Then a test in '97 by the USGS, a test
25 in '98 by Culligan water folks, a test in '99 by USGS in
26 April of '99, another test in November of '99 by USGS, a
27 test in 2000 by Pioneer, and then a follow-up test, I
28 believe, by our expert; and then I don't know whether there

1 was -- Jerry Wollaston, I don't remember whether his test
2 covered you or not. Those are the tests that I show.

3 MR. DOLAN: And do I have the Pioneer one, John?

4 MR. ROSS: Yeah, I think that -----

5 MR. DOLAN: Is it in that supplemental report?

6 MR. ROSS: Yeah.

7 MR. DOLAN: The confusion is then -- I guess, that sounds
8 right -- Culligan stuff I wasn't counting as a test, I
9 guess. But we've produced that Culligan stuff so you guys
10 should have everything we've done.

11 Q (By Mr. Fagan) Does that sound right, Donna?

12 A (By Deponent) Um-hm. (Deponent indicates yes.)
13 And like I said, I was rushing through a pile of
14 information that we have on all of this. And I may have
15 counted, like I said, counted one twice. We have numerous
16 copies of the different analyses.

17 Q That's understandable. I'm going to hand you a
18 letter from Joanna Thamke.

19 (AT THIS TIME, THE COURT REPORTER MARKED DEPOSITION
20 EXHIBIT 27 FOR IDENTIFICATION PURPOSES.)

21 Q (By Mr. Fagan) Donna, do you recognize that
22 letter?

23 A (By Deponent) Yes, I do.

24 Q And it's from Joanna Thamke referencing two tests,
25 one in November 1994 and the second one a USGS test in
26 1997, is that correct?

27 A That's why I was having problems finding dates on
28 these last night; and this one definitely is 1994, and, um

1 -- but I didn't see a date on this last page. (Mr. Dolan
2 points the date out.) Okay. Alright.

3 Q (By Mr. Fagan) It's referencing two tests,
4 correct?

5 A DEFENDANT: Right.

6 MR. ROSS: Why don't we mark that as an exhibit, too?

7 MR. FAGAN: We already did. It's Exhibit 27.

8 MR. ROSS: Okay, good.

9 Q (By Mr. Fagan) And this third page of the
10 exhibit, it's an Astro-Chem Lab water analysis. It's dated
11 11/14/94. Do you recognize that?

12 A (By Deponent) Yes, I do.

13 Q That's on your well?

14 A Yes.

15 Q And does Joanna Thamke reference that test on this
16 page here that summarizes the two tests?

17 A Right, yes.

18 Q This test here?

19 A Yes, 11 of '94, um-hm.

20 Q And so Joanna Thamke's put down the different
21 readings from each of those tests, right? the Astro-Chem
22 Lab test of 1994 and the USGS test of 1997?

23 A Um-hm. (Deponent indicates yes.)

24 Q And over here, this page also duplicates that
25 Astro-Chem Lab test, is that correct?

26 A Yes.

27 Q And would you agree that Joanna Thamke has put
28 down the wrong reading for the total dissolved solids that

1 Astro-Chem Lab came up with?

2 A Right.

3 Q That number is 1,429 mg. per liter, and what does
4 Joanna Thamke record it as?

5 A 1,170.

6 Q And that appears to be the same test, doesn't it?

7 A It appears to be, yes. I see those are the
8 figures here.

9 (AT THIS TIME, THE COURT REPORTER MARKED DEPOSITION
10 EXHIBIT 28 FOR IDENTIFICATION PURPOSES.)

11 Q And then there was a test run shortly thereafter,
12 I think, two to three months after that Astro-Chem Lab test
13 in November of 1994, that was done by Energy Laboratories
14 in February of 1995. Do you recall this test?

15 A I've seen a lot of these -- this Energy
16 Laboratories papers in my documentation, and I'm pretty
17 sure, but I can't be positive, that I've seen this exact.

18 Q This appears to be on your well, again?

19 A My name's on there.

20 Q Do you know who ran this test? Who performed it?

21 A No, I don't recall.

22 Q Do you know why a different test would be run two
23 to three months after that Astro-Chem test? Do you recall
24 why that was done?

25 A Well, I think that we've requested even more than
26 that, just so that we knew how the water was decreasing in
27 quality. And so, you know, like Deb Madison, my husband
28 was visiting with her several times during this time period

1 because we were concerned about our livestock and also
2 about our own, whether we should be using this for our
3 cooking -- because we still did after we -- and then we
4 decided that we are definitely not going to cook with it
5 any more. But because of the fact that our water was
6 decreasing in the quality of the water, that we felt that
7 we wanted more tests done.

8 Q Why did you want a second test done less than
9 three months after the first?

10 A I have no idea why it was done, but -----

11 MR. DOLAN: Can we go off the record a second?

12 MR. FAGAN: Sure.

13 (OFF THE RECORD FROM 11:14 TO 11:15 A.M.)

14 Q (By Mr. Fagan) Do you believe that second
15 exhibit 28, second test, was actually the same test as
16 Exhibit 27?

17 A The numbers don't -- aren't all the same, so I
18 would say no.

19 Q So it might be a different test?

20 A It could be a different test.

21 Q And you don't recall why the second test was run?

22 A I do not.

23 Q And when these two tests were done in November of
24 1994 and January or February of 1995, what was the water
25 quality at your house?

26 A 1994 to '95, we had potable drinking water. We
27 were actually drinking the water.

28 Q And you just moved on the property in November?

1 A In November of '94. And we would not have moved
2 onto that property if our water was not potable. We made
3 that very clear. And, um, we even told them not to even
4 start our septic tank or anything else, not even change
5 that. My sister and her son were farming that property, so
6 when we moved on it it was wheat stubble. But we didn't
7 want to move onto that property until we absolutely knew we
8 had potable water.

9 Q And so when these two tests were run, you had
10 moved onto the property, right?

11 A Yes.

12 Q So were you satisfied with the water when you
13 moved onto the property?

14 A It was drinkable.

15 Q Then why the concern to run two tests in three
16 months?

17 MR. DOLAN: Objection, she said she didn't know why.

18 A (By Deponent) I don't know why -----

19 MR. DOLAN: She didn't know why the tests were run.

20 Q (By Mr. Fagan) Okay, I won't beat it to death.
21 Ever find any -- has there ever been any finding of benzene
22 in any of your well samples?

23 A Not that I recall.

24 Q On any -- not just those two tests, any test
25 that's been run, do you know, no benzene finding?

26 A But benzene has been located in a well just north
27 of us, like a mile, mile and a half; and we are very, very
28 concerned about that as far as our health is concerned.

1. Q Which well is that?

2 A Um-m, I'm not sure. But I know that there's
3 benzene found in wells. In fact, my sister had a trace of
4 it in hers.

5 Q What's your sister's name?

6 A Audrey Kirn.

7 Q And did you say her property was about four miles
8 north of yours?

9 A Um-hm, (Deponent indicates yes.) approximately.

10 Q And who found that? Who ran the tests that -----

11 A I don't know. It was one of the tests, I think it
12 was, came out of the USGS, ----

13 Q Your sister's?

14 A --- but that's -- I don't know. Have any idea.
15 Yes.

16 Q So you think the benzene finding might be in the
17 USGS report?

18 A Well, no. I'm not even -- I don't know enough
19 about her particular water system or quality or whatever.
20 I would like to just stick to our own. I just mentioned
21 that because we are threatened by that, that it could move
22 in because of how our water quality has decreased. That's
23 the only reason I mentioned it. I don't know anything
24 about my sister's situation and the quality of her water.

25 Q We're just trying to find out, you know, the whole
26 picture, so we need to know; if there's people that have
27 found benzene in their wells, we need to know that. So you
28 -- so I guess you think your sister's well's been tested

1. positive for benzene, but you don't entirely know that for
2 sure.

3 A I don't know the amount, I don't know who did it,
4 I don't know when it was done. I just heard that.

5 Q She's told you that there was benzene -- and then
6 you've also heard from friends or neighbors that somebody
7 north of you has had benzene in their well, too?

8 A Right.

9 Q But you're not sure whose well that is?

10 A No.

11 Q Do you recall who told you that?

12 A No, I don't.

13 Q Do you recall when you heard that?

14 A Um, I think we've heard it a couple of times. In
15 fact, I think I heard from Deb Madison. But I'm not
16 positive, so.

17 Q How much oil field activity is around your
18 property?

19 A There isn't any directly. How far -- like what
20 are you talking about?

21 Q Can you see any from your property?

22 A Um, not exactly from our home, no.

23 Q But somewhere on your property, you can -- if
24 you're away from the home, you can see some?

25 A We could probably -- I've never been down in the
26 far south section of our pasture. If you look north,
27 there's a possibility that we could see it from there, but
28 I'm not positive.

1 Q Okay. But there are oil activities around your
2 property, though? You're aware of those?

3 A Oh, yes. Mostly north.

4 Q Has there been any seismograph activity around
5 your property?

6 A Not to my knowledge.

7 Q Are you aware of seismograph activity anywhere
8 around the Poplar oil field?

9 A Oh, I hear about it, yes.

10 Q And who do you hear about it from?

11 A Just different people. You know, I mean, we have
12 friends who are involved in that; and I don't have any
13 names, and I don't have any times, and I don't know how
14 many times that I've heard of it. But I'm from here, so
15 I've been involved with the -- when the discovery started
16 in 1950, so.

17 Q So you're pretty well aware of that seismographic
18 activity?

19 A I'm not pretty well aware. I just said that I'm
20 aware.

21 Q Okay. When did you first suspect that oil
22 activities might be causing the water on your property to
23 deteriorate?

24 A Well, um, I would say, when we got that report
25 from Thamke, whatever her name is. Thamke.

26 Q The USGS report?

27 A Um-hm. (Indicates yes.)

28 Q Had you never thought about it beforehand?

1. A There's a possibility. You know, you always sit
2 and discuss, why could this be happening. You know, we had
3 good water, why is our water not of good quality any more?
4 And, you know, I guess, we probably talked about the
5 possibility, but we never really knew that this -- the
6 activity, oil well activity, could cause this from where we
7 are.

8 Q What made you think that oil activities might
9 possibly be causing it? What was it about the oil
10 activities that made you think that that might be behind
11 the water problems?

12 A Prior to the report ----

13 Q Yeah.

14 A --- coming out?

15 Q You said you sat around and talked about it, well,
16 maybe that's causing -----

17 A Well, I guess that, ah, you know, just thinking
18 about how could the aquifer under the ground be changed.
19 And, um, the only way that we felt that it possibly could
20 be changed is by oil activity. Because, I mean, we know of
21 people that have lived out there that have had good water
22 for years, and now their water is changing also. And this
23 is, I mean, knowledge all over the town.

24 Q Rene Martell was here yesterday and was deposed,
25 and he told us that he'd heard about a lawsuit with Murphy
26 Oil years ago involving a farmer named Bud Lien, I think.
27 Had you ever heard about that lawsuit?

28 A Yes, I did, but I didn't -- it didn't come to my

1 mind when we were -- you know, when we were going through
2 this decrease in the quality of our water.

3 Q How did you hear about that lawsuit, do you
4 recall? Did you read about it in the papers or?

5 A I have no idea. I don't think I was here at the
6 time. So I think that this just came up. It could be at
7 the Tribal Chambers, I worked for the Tribe. You know, and
8 I'm not sure where I heard.

9 Q Did that lawsuit make you think about the oil
10 companies being responsible for your ground water
11 contamination?

12 A I don't think that that was even brought to my
13 mind again. You know, I might have heard about it years
14 and years ago when it happened. But until after all of
15 this started, that we knew that it was -- from the USGS
16 report, that it was.

17 Q Were you aware that the USGS was out there taking
18 samples and was preparing a report before it came out?

19 A Not very far before it came out.

20 Q And so it wasn't a surprise to you when the report
21 came out?

22 A No.

23 Q You knew they were out there doing some work. Had
24 you heard about it beforehand, before they were out in the
25 field, like through the Tribal government that they were
26 going to look into it?

27 A I'm not sure. You know, I might be confused on
28 the dates. I'm getting old here. My memory is going. But

1 I feel around that time that we, um, smelled -- there was
2 an offensive smell and, um, taste to the water that, ah, we
3 -- or my husband talked with Deb Madison, and she had just
4 stated some certain things that the Tribe was doing that
5 she heard was going on or whatever. It was just all
6 hearsay.

7 Q Looking into the water quality?

8 A Right.

9 Q Did you ever talk with neighbors and friends about
10 it?

11 A Um, I didn't. I'm not sure if my husband did or
12 not.

13 Q Have you ever talked with any Marathon Oil
14 employees?

15 A No.

16 Q How about Texas Oil and Gas?

17 A No.

18 Q Are you aware of any wells that either of those
19 companies operated?

20 A No.

21 Q Donna, what damages do you attribute to the poor
22 water quality? What do you think is causing -----

23 A Our whole homestead. We're -- are we going to be
24 able to exist on that land and for how long, you know. And
25 I think that that's our main concern that it has decreased
26 the quality of our life on the land. We are not able to
27 grow the produce that we feel that we should be able to.
28 And we have 40 acres, you know. There's a lot of land

1 there for activity. What we did is we took a wheat stubble
2 field and turned it into an oasis out there. I mean, we
3 have underground water. No one close to us have put in the
4 time, money and the energy into their property as we have
5 because we own the land. It was left by my father.

6 Q So do you think the property's worth less now than
7 when you moved on there in 1994?

8 A Course, who wants to move -- we wouldn't -- we
9 didn't want to move on the property if it did not have
10 potable water. How could we possibly expect anybody else
11 to.

12 Q So I'm not trying to be rude, but you said you
13 made it into an oasis?

14 A Um-hm. (Indicates yes.)

15 Q And that was only for that first year or -- I
16 assume it's not an oasis anymore, or is that not correct?

17 A Oh, it is, but it is deteriorating. Our lawn is -
18 - we don't know how long it's going to last. We have moved
19 in two rows of caragana, about 500 plants. We have about
20 75 different berry plants that we wanted to can, be able to
21 have for our future. And we want this land -- we wanted
22 this land to fix it up; and we have a daughter and
23 grandkids, you know, that it would be available to them.

24 Q Do you have any physical injuries that you would
25 say were caused by the water?

26 A Um, no, the only thing that we really noticed was
27 that our skin is super dry. We have to continue -----

28 Q Any open sores?

1. A Not that we would, you know -----

2 Q That you're aware of?

3 A Aware of, that would be caused by that.

4 Q Now, you provided, through Mr. Dolan recently, a
5 grant application for a business named North 40 Enterprise.

6 A That was done in 1995, and we submitted that
7 business plan.

8 Q I'm going to give you a copy of it, and we'll
9 enter it as an exhibit.

10 (AS THIS TIME, THE COURT REPORTER MARKED DEPOSITION
11 EXHIBIT 29 FOR IDENTIFICATION PURPOSES.)

12 Q (By Mr. Fagan) Where was North 40 Enterprise
13 going to be located at?

14 A (By Deponent) The home office would have been on
15 our property.

16 Q Would it have been in your home?

17 A Yes. And my son-in-law. We both lived on that
18 same property in different dwellings.

19 Q And the three owners would have been yourself,
20 your husband and your son-in-law?

21 A Right. And to be able to contract or to bid on
22 contracts through the Housing, my being an enrolled member.
23 I own 51%.

24 Q And can you describe the business idea behind the
25 North 40 Enterprise? What did you intend to do with it?

26 A Well, we wanted to get our son-in-law -- and he
27 did work with my husband and do a lot of landscaping and
28 tree trimming, and we also helped him with some

1. construction things that he -- he was a construction --
2 He's been in construction since, I would say, 1970 with his
3 father and brother out in Oregon, and he moved back to get
4 involved so that our family would be together. And, um, we
5 were going to get into construction business. We
6 definitely wanted the greenhouse because we wanted -- my
7 husband worked in a greenhouse in the '60's down in
8 Billings for several, several years, so he was very
9 familiar with the type of plants that would be profitable
10 to sell. And, um, this would eliminate him having to
11 travel down to Billings to do tree work down there. And,
12 um, so we wanted that greenhouse -- and there was -- we
13 wanted to get into the retail business of the plants, plus
14 also my husband can build a lot of things and so could my
15 son-in-law from birdhouses to, you know, some kind of
16 retail business. And, um, there were other things, ideas,
17 that we had for -- I don't know if we specifically stated
18 them in the plan. We thought we'd start with that that we
19 really knew.

20 Q Was it primarily construction, landscaping and the
21 greenhouse, is that the main -----

22 A Um-hm. (Indicates yes.)

23 Q And where was the funding for the company going to
24 come from?

25 A Well, there was, at that time, the Tribe had a
26 small entrepreneurial program that we received some funds
27 from. And, um, also we were hoping that we could get
28 everything started and so that we could put back into the

1 company and, um, to be able to plan for the greenhouse, to
2 be able to build a nice building out there. And we had an
3 exact spot that we wanted to place it that would be, um,
4 convenient for people to come out and to purchase all of
5 the retail items that we had.

6 Q So your idea with the greenhouse was to make it a
7 retail greenhouse?

8 A Yes. And there is not one in Poplar. The closest
9 one would be in Wolf Point at Friesen's. And, um, I felt
10 that with the knowledge that my husband had and my son-in-
11 law had, that we could really do a fantastic business out
12 there being that close to town.

13 Q And did you have some funds of your own to put
14 into this business?

15 A Yes, we did.

16 Q And how much was that? How much did you put in to
17 start with?

18 A Well, I don't even know if we had, um, determined
19 that. I think it's in our plan the amount that we had in
20 our checking account and so forth. But with the
21 partnership that we formed, we actually opened a checking
22 account and money was going back in. And we would have put
23 more in had we needed it in order to build the building and
24 to start the business.

25 Q I don't think I -- in this plan we have here, this
26 business plan dated March '95 that's part of the exhibit,
27 I don't believe there's anything in here about financing,
28 is there? I don't recall seeing anything about -- unless

1 I missed it. Was there a different plan that you prepared?

2 A No, this is it.

3 Q Did you prepare this plan?

4 A I think there was a question on -- (A phone call
5 momentarily interrupted the deposition.) And, you know,
6 after we had submitted this, we were working on projections
7 and everything, and, ah -----

8 Q You know, it looks like to me, Donna, we don't
9 have all the pages on here. There's financial statements
10 from you and your husband and I think it's your son-in-law?

11 A Um-hm. (Indicates yes.)

12 Q And those don't appear to be part of this.

13 A Part of it, okay.

14 Q Yeah. So maybe that was it. Do you have a full
15 copy of the business plan ----

16 A Yes.

17 Q --- that contains that information? Could we get
18 a copy of that?

19 A Sure.

20 Q It looks like there's a few pages -- yeah, the
21 financial stuff is missing. It's in the Table of Contents
22 but it's not -----

23 MR. DOLAN: Okay.

24 Q (By Mr. Fagan) How much money did you plan to put
25 in yourself to start this? Had you guys thought about how
26 much it would take?

27 A (By Deponent) No. Because we hadn't gotten that
28 far in determining -- we had not done the research to

1 determine the cost of a greenhouse. We had sent away and
2 we do have booklets and pamphlets on this, that you totally
3 know exactly, you know, running the line out there from the
4 well, you know, having the fans and everything that you
5 need for a greenhouse. We hadn't come down to a specific,
6 because that wasn't now. That was still in the future.
7 This is a five year plan. So we knew that we had to get
8 going on the construction at that particular time. And to
9 be able to -- for my son-in-law to be able to afford the,
10 you know, working in Poplar.

11 Q So this was -- the idea in here was going to take
12 five years to -----

13 A Not necessarily. I said it's a five year plan
14 that we would have had that in the workings once we got the
15 ground -- I mean, the business off the ground.

16 Q So it sounds like the financing was a little bit
17 vague. You weren't entirely sure -----

18 A Well, no, I'm sure that, um, being a minority and
19 being a woman, that I'm sure that even if we -- and we had
20 talked about going to the Small Business Association or
21 Small Business Organization. And, you know, I mean,
22 there's always -- I know that my job that I have and, you
23 know, I do make sufficient, and, ah, I don't -- I don't --
24 we didn't feel that there was a threat to not having the
25 sufficient amount of money to start a greenhouse, because
26 seeds aren't that expensive. You know, when you look at
27 the outlay of a business such as this, the building is your
28 main, I guess, ----

1 Q Need.

2 A --- need, and, I guess, costly cost.

3 Q Have you got an estimate of what it would cost to
4 build the greenhouse?

5 A We do. We have several from different places, and
6 we're ordering more. We'd still like to do this. And
7 we're hoping that, you know, that our -- that we will have
8 quality water, but that's speculation again, so.

9 Q You've actually -- you said you're ordering
10 estimates on what it cost to build a greenhouse?

11 A No, we're just looking at different businesses
12 that are out there, you know. I mean, even if we have to
13 move, we would still like a greenhouse someday.

14 Q Have you actually gone as far to get a bid from a
15 construction company and what they would charge you to
16 build a greenhouse?

17 A I'm sure that that's included in some of our --
18 but, I mean, that's how -- that's -----

19 Q Do you have documents on that?

20 A No, we don't.

21 Q Have you just informally talked with people about
22 it? Haven't gone that far?

23 A Well, you know, I'm not sure. We have information
24 from different places. I don't know, maybe two or three,
25 that talk about what is needed for a greenhouse. We have
26 not got into that much detail as to how we're going to come
27 up with the money to build it; and because our water's bad.
28 We can't build it now, anyway. So we haven't seriously

1 went into that part of our five year business plan. I
2 mean, we can't put in a greenhouse on our property and not
3 be able to water the plants. And to do all the research it
4 would take to determine what kind of plants we could grow
5 with the quality of water we have is -- we haven't even
6 considered.

7 Q What's happened with the North 40 Enterprises.
8 Anything since back in March of '95?

9 A No, my son-in-law and my daughter moved back out
10 to Oregon; and, um, we have not dissolved the partnership,
11 but there's been no activity for a couple of years.

12 Q When did they move out to Oregon?

13 A Probably in '97.

14 Q Did you actually go as far to form a legal
15 partnership?

16 A Yes.

17 Q Did you go through an attorney or?

18 A Ah, I think we did it with our CPA.

19 Q So back in March of 1995, I believe you applied
20 for a grant in November of 1995. What happened? Did you
21 do anything with North 40 Enterprise?

22 A With the money that we received from the -----

23 Q Did you get the grant? This is a grant
24 application here in the front page of the exhibit for
25 \$1,000 from -----

26 A Oh, okay, yes, we did get the grant.

27 Q And, so, what happened in 1995 with North 40
28 Enterprises, did you guys take any steps to do anything

1 with it?

2 A Yes, the North 40 was operable from 1995 to 1997
3 when my son-in-law moved. And it's still -- we still have
4 that -- I mean, we can still utilize that partnership. You
5 know, it was not dissolved. It was ----- there's non-
6 activity.

7 Q So from 1995 to 1997, you actually did perform
8 landscaping and construction services?

9 A Um-hm. (Indicates yes.)

10 Q And so, basically, you did do some things with
11 North 40 Enterprises for those two years, but you never got
12 to the greenhouse, is that correct?

13 A Right.

14 Q And why did you not get to the greenhouse? Why
15 did you not pursue that?

16 A Well, um, I don't know why. That was in our plan,
17 and we definitely were going to do it, and we would still
18 like to have it, but, um -----

19 Q You just haven't got around to doing that part
20 yet?

21 A Haven't done it, right.

22 Q And now you've put a claim in in this lawsuit for
23 \$150,000 in lost earnings from that greenhouse.

24 A Um-hm. And we feel that that amount is very, very
25 conservative.

26 Q And what do you base that amount on, how did you
27 compute that?

28 A Um, from my husband's past knowledge of the

1. greenhouse and what we felt, but, you know, it's -- um, we
2 haven't really gone into looking at, which we will, you
3 know, someone that can do a -- I need to sit down and do
4 some projections, but I really do feel that we were -- We
5 went and sat down, my husband and I, and said, okay, this
6 is what it possibly would have cost us to get the seeds
7 and, etc., once the buildings built, and then this is what
8 we felt we could sell, and this is what we came up with
9 this. It was a discussion, yes.

10 Q So the two of you sat down and figured it up a
11 little bit, and you came up with \$150,000. Did you do any
12 research at all to see what other greenhouses make? How
13 about, I think it's Friesens? Is that how you pronounce
14 it?

15 A No, because there's is a lot more than just the
16 greenhouse that we're talking about. I don't think there's
17 anything around close by that would, you know, actually
18 compare with what our thoughts were for our greenhouse.
19 And so, -- and we're talking -- I mean, we'd have to travel
20 major miles to find a comparable business.

21 Q So it sounds like you speculated a little bit
22 about how much you might have made?

23 A Yes.

24 Q I assume you never did a market survey or anything
25 like that to find out -----

26 A No.

27 Q Okay. Do you have any other damages, other than
28 the damages to the property value and the lost earnings

1 claim? Is there anything else?

2 A Well, um -- I'm getting so confused. Um. . .

3 MR. DOLAN: Need a break?

4 A (By Deponent) Yes, please.

5 (AT THIS TIME, A SHORT BREAK WAS TAKEN FROM 11:39 TO 11:45
6 A.M.)

7 Q (By Mr. Fagan) We're back after a short break.
8 Donna, and I'd ask you if you had any additional damages
9 you could think of beyond the property value and the lost
10 business income from the greenhouse? Did you think of
11 anything else?

12 A (By Deponent) Out of pocket expenses that we've
13 had.

14 Q Such as?

15 A Prior to the delivery of water, we would have to
16 go into town and we bought bottled water. And, so, we live
17 like six miles, you know, north and east of Poplar. We had
18 to drive into town every day to get water; and the more you
19 use it for cooking, of course, the more you need. So --
20 and we had the mileage that the water, bottled water, and,
21 um -----

22 Q And that was beginning about 1997, is that right,
23 you quit drinking the water out there?

24 A Yes. Um-hm.

25 Q Anything else you can think of?

26 A To when -- the fall of '99 when they delivered
27 that. And, um, also we had to put a water conditioning
28 unit on our water, and, ah, it started out at 16.75; and

1. because it was still not good, we added another container
2 that came up to about \$36 a month. And so that expense has
3 been there. And, um, we had to, like we said, get some
4 parts for the stock waterer to fix that. We've had to
5 replace several heads on our sprinkler systems. A lot of
6 our -- some of our plants have died. And, you know, um, I
7 think we had some work done on our water pump. But,
8 basically, it's out of pocket expenses.

9 Q Just going back to the greenhouse real quick, the
10 \$150,000 lost income, that's just for the greenhouse,
11 that's not the whole business, right?

12 A Right.

13 Q Just wanted to make sure I was clear on that.

14 A And we feel that that's really conservative.

15 Q Does the water treatment center or system that you
16 put in, that was -- did you put that in back when you moved
17 into -- or moved onto the property? the water treatment
18 system?

19 A Um, I think it was pretty close.

20 Q And why did you do that? The water was potable
21 then. Why did you put in the water treatment system, do
22 you recall?

23 A No. We also had other expenses, you know, like
24 for the cost of our buying vegetables, because we -- I
25 mean, we have a huge freezer. We were packing them while
26 we froze them, and also our -- we have a tiered strawberry
27 bed. It's all rocked and it's really nice. And our
28 strawberries, we don't have one left.

1 Q They won't grow?

2 A Um-hm, so.

3 Q Did they grow before?

4 A Unhunh. (Indicates yes.)

5 Q What year did they quit growing, do you recall?

6 A Um, they grew one year. One year we had a few,
7 but they -- I mean, they didn't look as good as others that
8 we've seen, but, um -- so I don't know. That must have
9 been 1996.

10 Q Do you still use your water treatment system?

11 A Yes.

12 Q What do you use it for if you're not drinking the
13 water?

14 A We still wash clothes out there and shower.

15 Q And so you've had that pretty much the whole time
16 you've lived on the property?

17 A Yes.

18 MR. FAGAN: I think that's all the questions I have for
19 you, Donna. Thank you.

20 EXAMINATION BY MR. ROSS:

21 Q Donna, my name is John Ross. I represent Pioneer
22 Natural Resources.

23 (AT THIS TIME, THE COURT REPORTER MARKED DEPOSITION
24 EXHIBIT 30 FOR IDENTIFICATION PURPOSES.)

25 Q (By Mr. Ross) I'll show you what's been marked as
26 Exhibit 30, and I don't believe this is in the record. Can
27 you identify that for us, please?

28 A (By Deponent) Yes.

1 Q And what is it?

2 A This was identifying the property that was left to
3 me when my father passed away. It was in his will and
4 testament.

5 Q And I see on the second page, it leaves property
6 to Donna Lee Buckles Metier. Is that you?

7 A Yes. I was married. That was my first married
8 name. I was married to David Metier, is how you pronounce
9 it.

10 Q Do you or your family -- I see the name Buckles.
11 Do they have any interest or have they had any interest in
12 oil production in the East Poplar oil field?

13 A I think that they have, but I don't know the
14 amount and the quantity or anything or the -- you know, how
15 many wells.

16 Q Do you know of any of the wells that your family
17 may have had an interest in? any particular wells or
18 location of any particular wells?

19 A No. I don't know the exact location is what I've
20 stated.

21 Q Are you familiar with the location of the Biere
22 well?

23 A No, I'm not. See, I moved from here in 1961, and
24 I didn't return until 1989.

25 Q Okay. Do you have any income statements that
26 would reflect the income of the North 40 from 1995 to 1970?
27 any income tax returns or any other financial statements
28 that would show what -----

1 A I don't have all of them, but I do -- I can. My
2 son-in-law would have them or our CPA. We had a CPA here
3 in town.

4 Q Could we get a copy of those, please?

5 A Um-hm. Yes.

6 Q What greenhouse did your husband work in in
7 Billings?

8 A It was on Poly, Salsbury.

9 MR. WHITMER: It's no longer in business.

10 A (By Deponent) He was working there when I met him
11 in 1961.

12 (AT THIS TIME, THE COURT REPORTER MARKED DEPOSITION
13 EXHIBIT 31 FOR IDENTIFICATION PURPOSES.)

14 Q (By Mr. Ross) I'm just going to show you the
15 document that your husband gave me during the break, which
16 I've marked as Exhibit 31. Are those documents that you've
17 seen and are you familiar with?

18 A (By Deponent) I've read parts of them, but he's
19 done more research on this; and he's read it and then
20 informed me.

21 Q These are documents that he's received regarding
22 the vegetation, is that correct?

23 A The -- yes, the -- how sensitive different plants
24 are to different chemicals.

25 MR. ROSS: I have no further questions. Thank you.

26 EXAMINATION BY MR. STERUP:

27 Q Donna, I'm Rob Sterup representing Samson
28 Hydrocarbons. You mentioned that you lived elsewhere from

1 1961 to 1989.

2 A Um-hm. (Indicates yes.)

3 Q Where did you live?

4 A We moved a lot all over the state. We lived in
5 Missoula, Bozeman, Helena. We had different businesses,
6 and I ended up out in Portland from '69 to -- or '79 to
7 '85. And, um, we moved back into Billings, and we moved
8 home 1989.

9 Q Why did you move back to Poplar in 1989?

10 A Um, I was ready to either become a teacher or I
11 needed a change in my profession. I was doing
12 electrolysis, and I had major back and neck problems; and
13 so I moved back here to change my profession.

14 Q You got the job at the Community College, and then
15 moved back to Poplar, I take it.

16 A No, I moved back without a job and just looked
17 around and submitted different applications for different
18 positions.

19 Q You moved to the current location, the 40 acre
20 site, in November 1994, is that accurate?

21 A Yes.

22 Q Where were you living from 1989 until November
23 1994?

24 A When I first moved home, I lived with my mother.
25 She lives at 314 D Street West in downtown -- in Poplar.
26 And, um, my husband lost her -- I mean, my sister lost her
27 husband in 1991, so I moved in with her to help her with
28 her farm and ranching. But I was working for the Tribes

1 for seven -- Well, from 1990 to 1996, I worked for the
2 Fort Peck Tribes.

3 Q Had you been planning to move to the 40 acre
4 location for sometime before November 1994?

5 A Oh, yes. We talked about it. In fact, we looked
6 around for different land that was available because my
7 sister was farming that particular piece; but she said,
8 this is yours, you should have it, and, you know, it was
9 mine. But we decided to move there. Once we knew the
10 water was there.

11 Q Yeah, you mentioned that it was important to you
12 to find out the water was potable. Why was that a source
13 of concern to you?

14 A Because we knew that the history -- or the -- not
15 the history. We knew that some of the people in the area
16 had bad water. In Poplar, right downtown Poplar, it's
17 terrible water. And we did not want to move on any
18 property, do the -- invest the money, the time and the
19 energy unless we could live there for the rest of our
20 lives.

21 Q Who are your closest neighbors at the 40 acre
22 location?

23 A Bleazards to the east of us were.

24 Q Alright, and who else?

25 A There's George Ricker to the north of us, and
26 Graingers to the south of us.

27 Q Did you talk to any of those folks about water
28 quality issues before deciding to move out to the 40 acre

1 location?

2 A Um, yes. There's Loegerings, too, that is a
3 little bit -- well, they're south of Bleazards, and they
4 had excellent water.

5 Q So you talked -----

6 A And so we did, you know, but -- we also talked to
7 Rod Bruner. Rod is the one that said, well, let's drill
8 the well and see what kind of water there is.

9 Q What did Bleazards report to you about their
10 water?

11 A Um, I don't think we talked to them. We didn't
12 know them.

13 Q How about the Rickers?

14 A The Rickers I know, but I don't think I talked to
15 her about the water. Maybe I did -- 'cause she was on --
16 I don't know. I don't think I did -- we did talk to any of
17 them. My husband might have, but I don't think I did.

18 Q Okay, and just to close the loop, the Graingers,
19 did you recall speaking to them about water quality before
20 you moved out to the site in November 1994?

21 A No.

22 Q And to determine whether or not the water was
23 potable, you had some tests conducted by Bruner, is that
24 accurate?

25 A Well, we made the decision to move on our 40
26 acres, we contacted Bruner, submitted an application to his
27 office to drill a well to determine if the water was
28 drinkable. And that statement was specifically on that

1. document.

2 Q Did you do anything else to investigate the water
3 quality before making the decision to move out to that 40
4 acre location?

5 A No. That was number one concern.

6 Q Do you recall ever speaking with anyone from
7 either Grace Petroleum or Samson Hydrocarbons?

8 A Not about the water.

9 Q About anything else?

10 A One of the Murphy guys, a friend of ours, but
11 water was never discussed.

12 Q And I was focusing on either Grace Petroleum or
13 Samson Hydrocarbons. Do you recall ever talking to anyone
14 from either of those companies?

15 A Not about water.

16 Q About anything else?

17 A Just friend stuff, you know. We had a close
18 friend that worked for Grace and a close friend that worked
19 for Murphy, and that water issue never came up.

20 Q Who is your friend that worked for Grace?

21 A Ted Nees, who passed away not long ago.

22 MR. STERUP: That's all that I have.

23 EXAMINATION BY MR. WEBSTER:

24 Q Donna, my name is Mike Webster, and I'm the
25 attorney who represents Murphy Exploration in this case.
26 You just mentioned that you had talked to -- or that a
27 close friend of yours had or does work for Murphy. Who
28 would that be?

1 A Ray Reede.

2 Q Have you and Ray visited about the water issues?

3 A No, never.

4 Q Have you visited with any other Murphy employees,
5 representatives, about the water?

6 A No. Not to my knowledge.

7 Q Because I, unfortunately, and I apologize, arrived
8 and missed the very beginning of your questions and answers
9 here, Donna. Did you work from 1997 through 1999?

10 A Yes.

11 Q And where?

12 A 1997, 1999, I've been working at the college.

13 Q At the college. And that's in Poplar?

14 A It's the Fort Peck Community College. It's a
15 Tribally owned college.

16 Q And did that require you to travel into Poplar
17 every day to do your work?

18 A Yes, it did.

19 Q One of the claims that's here is for mileage to go
20 get water; and I'm wondering, did you not just get water
21 when you'd come into work or did you go home and then come
22 back specifically to get water?

23 A I probably brought home water sometimes when my
24 husband didn't come. I don't -- my work day, because we
25 cover distance learning classes that can run in the
26 evenings, my work day is pretty hectic, and so my husband
27 did the majority of the shopping.

28 Q You indicated, I think, that you had a number of

1 | conversations with Deb Madison.

2 | A Not myself personally. I talked to Deb a couple
3 | of short conversations. I know my husband has stopped in
4 | her office on different occasions. And I don't know if he
5 | actually got to speak to Deb because Deb isn't in her
6 | office all the time.

7 | Q Do you recall the first time when you might have
8 | spoken with Deb Madison?

9 | A I know it was after the report came out, but
10 | that's the closest I can tell you.

11 | Q Did you ever speak to any of the other folks at
12 | the other agencies or offices at the Tribe about your water
13 | issues?

14 | A No. Not to my knowledge.

15 | Q Did you ever talk to the Indian Health Service
16 | people other than Rod Bruner at the very outset of moving
17 | onto your property about the water?

18 | A No, I did not. Not to my knowledge.

19 | Q Okay.

20 | A I know that different -- well, no. It wasn't
21 | about the water.

22 | Q In terms of the water that's now being provided,
23 | is that generally working out fairly well, that delivery
24 | system?

25 | A I would say, yeah.

26 | Q Okay. Do you have adequate water provided for
27 | drinking and cooking? Has that been an issue?

28 | A No. But it doesn't compare to going to the water

1 faucet -- I mean, the faucet and turning on and having
2 fresh clear water, you know. There's a big difference to
3 utilizing bottled water and having it on demand.

4 Q When you were talking about the landscaping of
5 your home and the rock work that you had put in and some of
6 the efforts that you had done to make your home a nice
7 place to be, you'd indicated that you'd put rock work
8 against your home, is that right?

9 A Um-hm. Um-hm. (Indicates yes.)

10 Q And I believe you said the reason you did that was
11 to keep rust stains from the house?

12 A Um-hm. (Indicates yes.)

13 Q Is the iron problem a problem out there in your
14 water?

15 A I don't know what it is. I don't know what -- if
16 it's iron or not. But it does -- the water from the hose
17 or our sprinkler system, if it touches our paint on our
18 house, it does turn yellow.

19 Q Evidently that was a problem from the outset of
20 living there? a problem that you recognized?

21 A Not to the outset, because it took us a while to
22 get the rock around the house.

23 Q Did you do some watering before you -----

24 A I guess, you know, we -- I noticed -- excuse me.
25 I guess I noticed that at the Tribal buildings. I don't
26 know if you have been to Poplar recently, but all of our
27 buildings on our campus and the Tribal building are rust
28 color; and I guess that's -- we just took that precaution.

1. Q And were you aware that one of these earlier
2 reports -- I don't remember which number it is here, but
3 it's the Energy Labs report, Exhibit 28 -- at the bottom,
4 it -- In 1995, it says that the iron and manganese exceed
5 maximum recommendations for drinking water. Do you see
6 where that's on there?

7 A Um-hm. Um-hm. (Indicates yes.)

8 Q And that report, was that in your possession? Do
9 you recall when you would have received that?

10 A No, I don't recall seeing -- the one that I recall
11 seeing is this one from Astro-Chem. This is the one that
12 we looked at -- or I look at the most because this one was
13 done to determine whether we would move on the property or
14 not.

15 Q Going back to Exhibit 28, the handwriting notation
16 that's on the bottom of that note, are you able to -- can
17 you read what has been written there and. . .

18 A Well is south of SWD drainage, 9/27/95, and we're
19 thinking that that's Rod Bruner, but we're not positive.

20 Q And the SWD, does that mean anything to you, those
21 letters?

22 A Not to me.

23 Q If I were to suggest that that meant salt water
24 disposal drainage, would that mean anything to you? Would
25 you know what was meant by salt water disposal?

26 A Um, no.

27 Q Okay. I'm not sure that's what it means, but I
28 wondered. Did any of your family members own a drilling

1 company, Whitmer Drilling? Is that a -- I saw a reference
2 to that.

3 A No.

4 Q Have you ever heard of Whitmer Drilling?

5 A I never have. I know that -- well, no, I don't
6 have -- I never -- I wasn't around when there was any
7 drilling or anything going on in Poplar or around the area
8 except for way up north.

9 Q Donna, you've been asked lots of questions. Do
10 you have anything that we haven't asked you that you think
11 you want to tell us?

12 A Well, we are very frustrated, we're discouraged,
13 we're devastated, because we have invested so much of our
14 money, time and energy into our 40 acres, our oasis out
15 there, and it is deteriorating. And we're 58 years old
16 now, and we don't feel that we're going to have the energy
17 or the money if, you know, the water continually gets worse
18 for us to move and start over again.

19 Q Are you familiar with the Fort Peck water system?
20 I'm not sure what the proper name for it is, but the water
21 system that's going to be built.

22 A Water pipeline. Yes, I am. Just from -- I
23 haven't even read the total articles in the newspaper, but,
24 you know, I don't think that that's going to happen in my
25 lifetime. And, um, the Tribe has had a lot of legislation
26 passed by Congress, but the money is not in this pipeline
27 yet; and who knows if it ever will be. And, so, I don't
28 feel that this pipeline is going to make any difference for

1 us, my husband and I, in our lifetime.

2 Q If it is constructed and it is during your
3 lifetime, I assume though that you would gladly participate
4 and tie in and use that water if it became available?

5 A It depends on the total infrastructure of how this
6 is going to work, you know; and we have no idea. I don't
7 even know if it would be available to us, but that's
8 another thing.

9 Q I just have a couple more quick questions. When
10 the USGS personnel were out doing their sampling and they
11 began -- or when they were out there in the field, did you
12 visit with them, talk to them at all?

13 A No. I might have answered the door or -- I don't
14 even know who was who, to tell you the truth. I work from
15 eight until sometimes ten in the evenings, and so I'm not
16 home during the day.

17 Q Did any other family members that might have been
18 home tell you, at any point during that time, that someone
19 from a government office came by and wanted to take water?
20 Do you recall any of that?

21 A I think my husband told me on a couple of
22 occasions.

23 Q Did he ever -- did you ever hear whether they had
24 indicated what their purpose was or what they thought that
25 the cause of water problems might be?

26 A No.

27 MR. WEBSTER: I don't have anything else.

28 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION WAS THEN

CONCLUDED AT 12:10 P.M.)

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CERTIFICATE

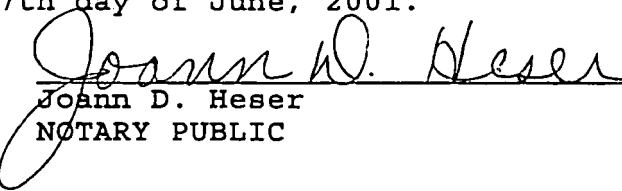
STATE OF MONTANA)
 : ss.
COUNTY OF ROOSEVELT)

I, JOANN D. HESER, Official Court Reporter, Fifteenth Judicial District, and a Notary Public duly qualified in and for the State of Montana, hereby certify there came before me the deponent herein, namely DONNA WHITMER, who was by me duly sworn to testify to the truth and nothing but the truth concerning the matters in this cause.

I further certify that I was the Official Court Reporter who reported, by means of LANIER recorder, this deposition. The testimony therein and other proceedings herein contained are a true and correct transcription of the original tapes and my notes, TO THE BEST OF MY ABILITY.

I further certify that I am not related in any manner to any party, witness, or counsel and have no financial or other interest in the outcome of the above entitled cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this 27th day of June, 2001.


Joann D. Heser
NOTARY PUBLIC

My Comm. exp. 7/2/2004

DEPONENT'S CERTIFICATE

I, DONNA WHITMER, do hereby certify that I have read the foregoing transcript of my testimony and that the same is a full, true and correct record of my deposition except as to any corrections I have listed on the Corrections to Deposition form.

_____ Changes and corrections made.

_____ No changes or corrections made.

DONNA WHITMER

Subscribed and sworn to before me this _____ day of _____, 2001.

NOTARY PUBLIC for the State of Montana
Residing at _____, Montana
My Commission expires _____

CORRECTIONS TO DEPOSITION

The Deponent, DONNA WHITMER, states she wishes to make the following changes in testimony as originally sworn:

[illegible]

DONNA WHITMER

1	IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA BILLINGS DIVISION	1	<u>INDEX</u>
2		2	DEPONENT:
3		3	<u>DONNA WHITMER:</u>
4		4	EXAMINATION BY MR. FAGAN Page 4
5	CARY G. YOUPEE, et al.,	5	EXAMINATION BY MR. ROSS 45
6	Plaintiffs,	6	EXAMINATION BY MR. STERUP 47
7	vs.	7	EXAMINATION BY MR. WEBSTER 51
8	MURPHY OIL USA, INC., et al.,	8	CERTIFICATE OF COURT REPORTER 59
9	Defendants.	9	DEPONENT'S CERTIFICATE 60
10	Cause No. CV 98-108-BLG-JDS	10	CORRECTIONS TO DEPOSITION 61
11	Judge Jack D. Shanstrom	11	
12		12	<u>EXHIBITS</u>
13	MESA PETROLEUM and PIONEER	13	
14	NATURAL RESOURCES, USA, INC.,	14	27 Chemical Analysis Water Reports, Donna Buckles-Whitmer 22
15	Defendants/	15	28 Water Analysis from Energy Laboratories, Donna Buckles 24
16	Third Party Plaintiffs & Cross Plaintiffs,	16	29 .CFCD Mini-Grant Application, North 40 Enterprise Owner, Donna Buckles-Whitmer 34
17	vs.	17	30 Order Approving Will & Decree of Distribution Estate of Austin Reginald Scott Buckles, Sr. 45
18	AMARCO RESOURCES CORP.	18	31 Service in Action, Crop Tolerance to Soil Salinity . . 47
19	BESTWAY INC.; WESTDALE	19	
20	PETROLEUM INC.; and THE	20	
21	PRUDENTIAL GROUP,	21	
22	Third Party Defendants,	22	
23	vs.	23	
24	JOHN DOES 4-50,	24	
25	Cross-Defendants.	25	
26		26	
27		27	
28		28	

1	<u>APPEARANCES</u>	1	BE IT REMEMBERED: That the oral deposition of DONNA
2	<u>ATTORNEY FOR PLAINTIFFS:</u>	2	WHITMER was taken at 10:26 a.m. on the 12th day of June,
3	Richard J. Dolan, Esq.	3	2001 at the Sherman Motor Inn, 200 East Main, Wolf Point,
4	GOETZ, GALLIK, BALDWIN & DOLAN, P.C.	4	Montana, with the appearances of counsel hereinbefore
5	The Ketterer Building	5	noted, before Joann D. Heser, Official Court Reporter and
6	35 North Grand	6	Notary Public for the State of Montana.
7	P.O. Box 6580	7	The following proceedings were had:
8	Bozeman, Montana 59771-6580	8	-----
9	<u>ATTORNEY FOR MURPHY EXPLORATION & PRODUCTION COMPANY:</u>	9	Whereupon,
10	Michael E. Webster, Esq.	10	<u>DONNA WHITMER</u>
11	CROWLEY, HAUGHEY, HANSON, TOOLE & DIETRICH	11	called for examination, and being first duly sworn upon her
12	490 North 31st Street	12	oath, testified as follows:
13	Billings, Montana 59101	13	<u>EXAMINATION BY MR. FAGAN:</u>
14	<u>ATTORNEY FOR MARATHON OIL COMPANY:</u>	14	Q Do you mind if I call you Donna?
15	Gerry P. Fagan, Esq.	15	A Nope.
16	Gerald B. Murphy, Esq.	16	Q My name is Gerry Fagan, and I represent an oil
17	MOULTON, BELLINGHAM, LONGO & MATHER, P.C.	17	company, Marathon Oil. Have you ever been deposed before?
18	Suite 1900, Sheraton Plaza	18	A No.
19	P.O. Box 2559	19	Q Do you understand -- has Mr. Dolan been able to
20	Billings, Montana 59103	20	explain to you the process, how this works?
21	<u>ATTORNEY FOR PIONEER NATURAL RESOURCES COMPANY:</u>	21	A Yes, pretty much. For the most part.
22	John Walker Ross, Esq.	22	Q And you understand you're under oath?
23	BROWN LAW FIRM, P.C.	23	A Yes.
24	P.O. Drawer 849	24	Q And that you're supposed to tell the truth, that
25	315 North 24th Street	25	we can use any of the statements we make today at trial if
26	Billings, Montana 59103-0849	26	need be. And if I ask any questions that you don't
27	<u>ATTORNEY FOR SAMSON HYDROCARBONS:</u>	27	understand or are confusing, just stop me and make me do it
28	Robert L. Sterup, Esq.	28	right. I want to make sure you understand everything.
	DORSEY & WHITNEY		
	1200 First Interstate Center		
	401 North 31st Street		
	P.O. Box 7188		
	Billings, Montana 59103		
	<u>ALSO PRESENT:</u>		
	Warren Whitmer		

Page 5

Page 7

1 A Alright.

2 Q The notice of deposition that went out for your
3 deposition. Did you receive that or look it over?

4 A Yes, I did.

5 Q And it asked you to bring any documents that might
6 be relevant, and did you do that?

7 A Um, no. Dick had them all.

8 Q So you didn't bring anything new with you today?

9 A No. We have been submitting the documents
10 periodically.

11 Q What's your occupation, Donna?

12 A I'm the distance learning coordinator for the Fort
13 Peck Community College.

14 Q What kind of learning coordinator?

15 A Distance learning coordinator.

16 Q And what is that?

17 A Well, we have distance learning courses coming in,
18 some degree programs coming in from different institutions
19 in the state. We use an interactive television system. We
20 also have -- extend any -- they call it extended studies or
21 professional development. I coordinate the workshops,
22 seminars for the college. I also work with the teacher
23 training program. I've been there since 1994.

24 Q What's your educational background?

25 A I have a bachelor's degree in business and art
26 from Eastern Montana College in Billings.

27 Q What members of your family are involved in this
28 lawsuit, in addition to yourself?

Page 6

1 A My husband and I.

2 Q Are you related to any other plaintiffs in this
3 case?

4 A No. Not to my knowledge. We have had difficulty
5 trying to determine our family tree.

6 Q The ownership of the property that your property's
7 involved in this case, how do you own that?

8 A My father left it to me when he passed away in
9 1983.

10 Q Is it a fee interest?

11 A No. I own it. (Mr. Dolan indicates it is a fee.)
12 Is that a fee? Sorry.

13 Q It's a legal term, so. How long have you been on
14 that property?

15 A Since 1994. We moved on in November of '94.

16 Q We have this -- right in front of you is
17 Exhibit A, which is a map of the area. We've been having
18 everybody put their name on where they actually are
19 located. Could you do that for us, please?

20 (OFF THE RECORD FROM 10:39 A.M. TO 10:45 A.M.)

21 Q (By Mr. Fagan) We're back on the record then? So
22 we were just able to determine where you're located at and
23 everybody's comfortable with that, I think. Did you say
24 you moved on the property in 1994?

25 A (By Deponent) Yes.

26 Q Where did you live before that?

27 A I grew up here, and I moved for several years, and
28 I moved back on the reservation. I'm an enrolled member,

1 and I lived with my sister and my mother; and then Warren
2 and I decided to homestead up there and got married.

3 Q When you lived with your sister and your mother,
4 where was that located at?

5 A My sister is Audrey Kim. She lives just north of
6 us about four miles. And my mother lives in town in
7 Poplar.

8 Q So Audrey's property, is it in the area in front
9 of you on the map?

10 A Yes.

11 Q And you lived for how long with Audrey?

12 A Probably four years.

13 Q And is that the property you lived at right before
14 you went to the property we've just discussed?

15 A Yes.

16 Q And you and Warren lived with Audrey?

17 A No. Just me.

18 Q And you're still on the property today?

19 A Yes, we are.

20 Q The property that we discussed?

21 A Yes.

22 Q How many water wells are on that property?

23 A Just one.

24 Q Where is the well on the property in relation to
25 your house?

26 A It's about probably -- you know, I'm terrible with
27 feet, but I think it's like 50 feet, a little southwest of
28 our home.

Page 8

1 Q And where is the septic system located?

2 A It goes out north and west.

3 Q When was the well on your property drilled?

4 A It was drilled October of '94.

5 Q And is that when you moved onto the property?

6 A No, we moved on in November of '94. We waited --
7 when we submitted our application to have a well drilled,
8 we made a statement on that application that we would not
9 start any construction activities on the land until we knew
10 that our water was potable.

11 Q So you had the well drilled, then you moved onto
12 the property?

13 A After we got the analysis back.

14 Q And did you construct a house on the property
15 then?

16 A We moved a trailer home onto the property.

17 Q So you received an analysis on the well when it
18 was drilled?

19 A Yes, we did.

20 Q And who was that from?

21 A Rod Bruner with the Indian Health Service.

22 Q And what did it say?

23 A Well, it basically said that we had potable water.
24 We were able to drink the water.

25 Q Is that all it said or did they give you an
26 analysis of different chemicals that may be in the water?

27 A Yes, it did, and. . . (Confers with her attorney
28 briefly.)

Page 9

Page 11

1 Q And that was probably performed in November?

2 A I think the results got back the first of November
3 of 1994.

4 Q What was the water like when you first moved on
5 the property then?

6 A It was clearer, we were able to drink it. It was
7 wonderful going to the faucet and turning on the water and
8 getting clear, drinkable water.

9 Q Did it have any taste to it?

10 A Not at that particular point. Never bothered ----
11 -

12 Q No salty taste?

13 A No.

14 Q How about an odor?

15 A No.

16 Q Was there any coloration in it?

17 A No.

18 Q Any rust color? any orange color?

19 A There was some, but very minimal.

20 Q Did it affect your faucets or pipes at all?

21 A Um, like I said, there was some yellow to it. I
22 don't know. We never had to have anything replaced at that
23 particular point.

24 Q Did you notice a film on the water?

25 A Not at that particular time.

26 Q And you used it for all uses?

27 A All uses.

28 Q Including household and landscaping and gardening

Page 10

1 and those kind of things?

2 A Yes.

3 Q With no problems?

4 A No problems. We have -- we had put in underground
5 sprinklers in our garden, and our garden's about 20 by 160.
6 And also in our home we have 5000 square feet of sod that
7 we put around our home in our landscaping; and, um, my
8 husband was in the landscaping business for thirty some
9 years, and so he really worked with the land. And because

10 my father left it to me, I really felt that we needed to
11 take care of the land, and we wanted to be good stewards of
12 the land, and so we spent a lot of time, energy and money.
13 We put -- you know, put all of our money into this -- the
14 buildings, the landscaping, my husband went out and cut
15 down the posts for our total fence that goes around
16 eighteen acres for our livestock, we put a barn in, we took
17 down a building and brought -- it was an old wheat storage
18 building, and we brought it down to our land and built a
19 shop garage, barn connection. And so we put a lot of time
20 and energy in this property because we knew we had good
21 water at the time.

22 Q And this is all starting in November of '94?

23 A Yes.

24 Q When did you start doing the gardening and
25 landscaping?

26 A Oh, our best garden was the summer of '95. We had
27 a beautiful garden. And Warren and I both put the
28 underground sprinklers in, and we've had to replace a lot

1 of the heads since then; and our garden is not even a small
2 percentage of the quality we had in '95.

3 Q So I take it the water changed at some point?

4 A Yes, it did.

5 Q When was that?

6 A My husband left because we weren't able to start
7 our greenhouse, which was in our five year plan that was
8 submitted in 1995 when we formed a partnership with our
9 son-in-law. And we weren't able to start that business
10 because we didn't have the funds. We had invested so much
11 money -- of our money into what -- you know, just getting
12 the homestead started, that we didn't have sufficient funds
13 to start that at the time. And so he was travelling to
14 Billings. He had a business, tree trimming business, in
15 Billings, and would go to Billings during the summer and
16 work on these people that have had him work in their yards
17 for thirty some years. And when he came back in May of
18 '97, that's when he noticed. I had been drinking the water
19 and I -- you know, I noticed some taste but it wasn't
20 really offensive to me at the time, so I continued drinking
21 it. But when he came home in May of '97 for a visit and we
22 started putting our garden in and, etc., that's when we
23 noticed a definite change in the water, that there was
24 definitely an offensive smell. And, I mean, it really was
25 apparent in like one bathroom and the kitchen.

26 Q You said May of '97?

27 A Um-hm. (Indicates yes.)

28 Q So you had lived on the property for approximately

Page 12

1 a year and a half?

2 A Um-hm. (Deponent indicates yes.)

3 Q And was it a gradual change in that year and a
4 half?

5 A No.

6 Q It was all of a sudden?

7 A It was -- Well, it probably was, but I didn't
8 notice it using it every day. When he came back, he
9 noticed it.

10 Q Had Warren been gone most of that year and a half?

11 A No, he was gone down to Billings and then back.
12 He would travel back and forth to Billings to take care of
13 his business down there.

14 Q But he was gone more often than he was at the
15 home?

16 A No, I would say that he was at the home, too, but
17 that's when we noticed the big drastic change in the
18 quality of the water was in May of '97.

19 Q Just so I understand this, you're not saying it's
20 a drastic change that happened on, say, May 1, 1997. It
21 happened a little bit by little bit between November of ---
22 --

23 A Well, it must of, but I wasn't aware of it. You
24 know, we did smell a little bit of odor -- there was an
25 odor to it at some point, but it was only in one area of
26 the house, in the back bedroom by -- our bedroom. And, ah
27 ----

28 Q Water odor?

Page 13

Page 15

1 A Yes. The water stunk.
 2 Q But only in the back of your bedroom?
 3 A Yes, at that particular time. And it wasn't all
 4 the time. It would come and go.
 5 Q What was the smell like?
 6 A I have no idea. It was probably close to a
 7 sulphur type.
 8 Q Rotten eggs kind of thing?
 9 A Rotten egg, yeah.
 10 Q And how about the taste of the water?
 11 A The taste -- we started -- we never used it out of
 12 that -- or I didn't use the water out of that bathroom
 13 during the time that it stunk. But, like I said, it didn't
 14 stink all the time. There wasn't that major odor, and so.
 15 Q Did you notice a difference in quality between
 16 different sources in your house for the water, like, say,
 17 the kitchen versus the bathroom?
 18 A Well, at that particular time, because of that
 19 odor, I would say, yes, we did notice that the kitchen --
 20 We still continued to cook with that water and to drink it
 21 until May of '97; and that's when we decided that we didn't
 22 want to jeopardize our health and continue drinking it
 23 because we didn't know why it was -- the odor was there,
 24 and also the water wasn't real clear, and, um, I saw more
 25 rust on the, you know, like the tubs and the sinks and in
 26 my dishwasher.
 27 Q So you thought the water might be different in the
 28 kitchen versus the bathroom, is that correct, the quality?

1 - the condition of the pipes in the old trailer would not
 2 have caused this if we're smelling the same odor in the new
 3 trailer.
 4 Q When did you change the use of your water then?
 5 '97?
 6 A Yes.
 7 Q And you quit drinking it in May of '97, is that
 8 correct?
 9 A Yes.
 10 Q And that was just because of the taste and the
 11 odor?
 12 A Right.
 13 Q Did you ever notice any film in the water?
 14 A We do now more recently.
 15 Q When did you first notice that?
 16 A Um, you know, we had a waterer that -- a stock
 17 waterer that we put out into the barn area for our
 18 livestock; and that was never, ever clear, except for
 19 possibly the first day. And, um, you know, we really never
 20 made specific notations about the actual -- you know,
 21 because we don't have water setting any other place in our
 22 property except in the -- that water tank out in the barn.
 23 And that's when I noticed it is when the water sat for
 24 awhile.
 25 Q But you said the water you put out for your
 26 livestock was never clear going back to 1994?
 27 A We never put that in in '94. That was put in
 28 later. And I think that actually we smelled -- the -- it

Page 14

Page 16

1 A Just because of the smell. And we never had ----
 2 Q What do you think would cause that?
 3 A I have no idea.
 4 Q How about the color of it, was it different
 5 between the kitchen and the bathroom?
 6 A No, because ----
 7 Q More rust in one versus another?
 8 A Well, I think you'd be more aware of the rust in
 9 the tubs than in the sinks in the kitchen because you use
 10 the sinks in the kitchen more. You know, you're there
 11 more. And so, I would say, yes, that I did notice more in
 12 the bathroom.
 13 Q I believe it was a mobile home you were living in?
 14 A Yes.
 15 Q How old a mobile home was it?
 16 A That was a -- the initial trailer that we moved
 17 into was a -- I think it was a '75, and now we're living in
 18 a '95.
 19 Q And when did you replace the original mobile home?
 20 A Um, when my daughter moved -- my daughter and her
 21 husband moved on the property with us and lived there for
 22 approximately two years. And so it would be '97 when we
 23 took over their trailer, sold our older trailer, and, ah --
 24 but theirs was a brand new trailer in '95.
 25 Q How was the plumbing in the original trailer when
 26 you lived in it? Could that have been the source of the
 27 difference between the kitchen and the bathroom?
 28 A No, because we smell it in our new one. So that -

1 was around -- I can't even remember the date that we put in
 2 the water system, but, ah ----
 3 Q This was a water system for the livestock?
 4 A Um-hm. (Deponent indicates yes.) We ran a line
 5 to them for a out-stock waterer.
 6 Q Coming from the water well on your property?
 7 A Yes. The same well.
 8 Q And when you did that, that water was never clear
 9 for the livestock?
 10 A Right.
 11 Q But you're not sure when the ----
 12 A I'm not sure of the date. Um, I would say --
 13 let's see, this is -- maybe '98.
 14 Q So this was after you saw the difference in the
 15 water and quit drinking it yourself?
 16 A Right.
 17 Q But you thought at the time, it would still be
 18 okay for livestock to drink?
 19 A We did. We hoped.
 20 Q Did they drink it?
 21 A Yes.
 22 Q Do they drink it today?
 23 A Yes.
 24 Q Did the water change cause any damage to any of
 25 your pipes in your trailer home?
 26 A We never had them checked, but I know that, you
 27 know, for instance, that waterer, we put -- had to replace
 28 a plastic floater -- that's about this big -- into the tank

Page 17

Page 19

1 twice in one year. Um, we've never had any plumber come in
2 to investigate our pipes in our new trailer. And, um, so
3 I'm not knowledgeable about that.

4 Q How about the landscaping and garden, how is that
5 affected?

6 A Oh, it's -- our lawn quality has diminished
7 tremendously. If you look -- and the sod that we brought
8 in, we laid it ourselves. We did rock around the house
9 because we didn't want any rust getting on the home. So
10 our total landscaping was planned by my husband, and it's
11 a beautiful job. And now -- and when we set the sod in, we
12 got a guy up from Sidney on a Friday, and we put it on
13 Saturday and Sunday that same week, and it was just
14 beautiful green clear down to the ground. And, now, it is
15 yellow and brown, and the only thing green out there is the
16 very tips of the grass.

17 Q And that was in 1995 that you put the sod in and
18 the landscaping?

19 A I've got to think about the dates.

20 Q I think you moved in November of '94, right, and -
21 ----

22 A Yes, I think it was in '95, the summer of '95 or
23 the summer of '96.

24 Q When did you first notice the gardening and
25 landscaping deteriorating?

26 A Ninety-six.

27 Q So '95 it went in and it was nice that year?

28 A Um-hm. (Deponent indicates yes.)

Page 18

1 Q The next year it wasn't nice. Is that correct?

2 A Well, we still had a nice garden, but our bean
3 production was way down. And my husband did find out that,
4 you know, that there is -- that after the fact, we find out
5 that there are plants that are more susceptible to salt.
6 And we've never had a nice bean crop since that time. It
7 has decreased ----

8 Q So how many different crops do you grow on that
9 property?

10 A We have -- we have approximately three to four
11 hundred plants of potatoes. We have corn, we have beans
12 when we can get them. We also have, like, onions, squash
13 plants. Asparagus -- we just got this year; we put it in,
14 we're trying it, we're not sure how it's going to react.
15 But also we have cucumbers and ----

16 Q Are these for your own use or for commercial uses?

17 A We share with our family and also for us. We can.
18 We have a great system. We cut off the corn off the cob,
19 and we vacuum pack it. So we've invested a lot of money to
20 have this garden and to provide us and our family with
21 fresh produce throughout the year.

22 Q So it's just for family use, not -- you're not re-
23 selling it to anybody?

24 A No.

25 Q And do you irrigate it still with the water from
26 the well?

27 A Yes, we do.

28 Q And has your production gone down over the last

1 five years?

2 A Yes. As a matter of fact, you know, last year, we
3 had a pretty good crop, but it was because we had early --
4 early rains. and so our plants got big enough and strong
5 enough. And so we had a better crop last year than we had
6 in the last -- since 1995.

7 Q Is that the best crop you've had since 1995?

8 A No. Oh, yes, it is.

9 Q So it'd be the 2000 crop?

10 A Um-hm. (Deponent indicates yes.)

11 Q And 1995 would be the first crop you had?

12 A Yes.

13 Q So was the 2000 crop the best one you've had?

14 A No. Not -- the '95 ----

15 Q The '95 was best than 2000's the next?

16 A Um-hm. (Deponent indicates yes.) When our water
17 was still good and we were still drinking it, we watered
18 our garden and our garden was beautiful.

19 Q So last year you got a lot of rainfall?

20 A Yeah. We had a lot of rain last year, and so our
21 garden was better than it had been.

22 Q How about 1995? How was the rainfall that year?

23 A Um, I don't think it was much that I recall. We
24 had to water a lot.

25 Q How about in the years inbetween '95, '97?

26 A The years in between, we still never had the early
27 rain that we had last year to my knowledge.

28 Q How's your crop so far this year?

Page 20

1 A Um, we've got a lot of potatoes. Our corn didn't
2 even come up, and our beans are looking real sad.

3 Q Have you had any soil tests run on your property
4 out there?

5 A Soil, no. My husband has, though -- he's done a
6 lot of work and preparation of the soil to plant a garden.
7 Every year he puts in -- mixes in the fertilizer and
8 everything with it, and he prepares the land. And we've
9 done that each year. And, ah, you know, looking at our
10 potato plants right now, last night, we were out there
11 pulling weeds and they are beautiful. But we have no corn,
12 and our beans look real sick.

13 Q The potato crop was a good one?

14 A Um-hm. (Deponent indicates yes.)

15 Q Is it better than last year?

16 A Um, maybe not any difference at this particular
17 stage of growth. No, I don't think so.

18 Q Do you know neighbors or other folks around this
19 area that grow beans or corn?

20 A No, I do not.

21 Q You don't know people ----

22 A I don't know -- I'm sure I, you know, know people
23 that have it, but I haven't specifically seen their gardens
24 or anything.

25 Q Is that the kind of crop that grows very well up
26 here normally, do you know? Beans or corn?

27 A Oh, yes, we've always been able to, um-hm.
28 (Deponent indicates yes.)

Page 21

1 Q How many tests have you had performed on the water
2 well itself, the quality?

3 A I was looking at that last night, and I'm pretty
4 sure that we had that initial one in '94; and then we've
5 had -- I've found six, but I think approximately --
6 There's approximately six water analyses that we have in
7 our possession, but there could be seven or eight. I don't
8 know if I found them all last night. I thought that we
9 were coming tomorrow morning, and so, you know, my
10 preparation wasn't as good as it would have been.

11 Q So there -- are some of these -- Some of these
12 documents about the water tests, they haven't been produced
13 yet to Mr. Dolan or to -----

14 MR. DOLAN: No. About the water tests?

15 MR. FAGAN: Yeah. You've made seven or eight tests?

16 MR. DOLAN: Oh, I haven't got seven or eight. Let's go off
17 the record.

18 (OFF THE RECORD FROM 11:05 A.M. TO 11:07 A.M.)

19 MR. WEBSTER: We're back on the record now after some
20 confusion about how many water tests there have been. What
21 I show in some notes that I have taken is that there was a
22 test in November of '94 apparently done by the IHS, a test
23 done in February of '95 by Energy Labs, and I assume that
24 also was the IHS. Then a test in '97 by the USGS, a test
25 in '98 by Culligan water folks, a test in '99 by USGS in
26 April of '99, another test in November of '99 by USGS, a
27 test in 2000 by Pioneer, and then a follow-up test, I
28 believe, by our expert; and then I don't know whether there

Page 22

1 was -- Jerry Wollaston, I don't remember whether his test
2 covered you or not. Those are the tests that I show.

3 MR. DOLAN: And do I have the Pioneer one, John?

4 MR. ROSS: Yeah, I think that -----

5 MR. DOLAN: Is it in that supplemental report?

6 MR. ROSS: Yeah.

7 MR. DOLAN: The confusion is then -- I guess, that sounds
8 right -- Culligan stuff I wasn't counting as a test, I
9 guess. But we've produced that Culligan stuff so you guys
10 should have everything we've done.

11 Q (By Mr. Fagan) Does that sound right, Donna?

12 A (By Deponent) Um-hm. (Deponent indicates yes.)
13 And like I said, I was rushing through a pile of
14 information that we have on all of this. And I may have
15 counted, like I said, counted one twice. We have numerous
16 copies of the different analyses.

17 Q That's understandable. I'm going to hand you a
18 letter from Joanna Thamke.

19 (AT THIS TIME, THE COURT REPORTER MARKED DEPOSITION
20 EXHIBIT 27 FOR IDENTIFICATION PURPOSES.)

21 Q (By Mr. Fagan) Donna, do you recognize that
22 letter?

23 A (By Deponent) Yes, I do.

24 Q And it's from Joanna Thamke referencing two tests,
25 one in November 1994 and the second one a USGS test in
26 1997, is that correct?

27 A That's why I was having problems finding dates on
28 these last night; and this one definitely is 1994, and, um

Page 23

1 -- but I didn't see a date on this last page. (Mr. Dolan
2 points the date out.) Okay. Alright.

3 Q (By Mr. Fagan) It's referencing two tests,
4 correct?

5 A DEFENDANT: Right.

6 MR. ROSS: Why don't we mark that as an exhibit, too?

7 MR. FAGAN: We already did. It's Exhibit 27.

8 MR. ROSS: Okay, good.

9 Q (By Mr. Fagan) And this third page of the
10 exhibit, it's an Astro-Chem Lab water analysis. It's dated
11 11/14/94. Do you recognize that?

12 A (By Deponent) Yes, I do.

13 Q That's on your well?

14 A Yes.

15 Q And does Joanna Thamke reference that test on this
16 page here that summarizes the two tests?

17 A Right, yes.

18 Q This test here?

19 A Yes, 11 of '94, um-hm.

20 Q And so Joanna Thamke's put down the different
21 readings from each of those tests, right? the Astro-Chem
22 Lab test of 1994 and the USGS test of 1997?

23 A Um-hm. (Deponent indicates yes.)

24 Q And over here, this page also duplicates that
25 Astro-Chem Lab test, is that correct?

26 A Yes.

27 Q And would you agree that Joanna Thamke has put
28 down the wrong reading for the total dissolved solids that

Page 24

1 Astro-Chem Lab came up with?

2 A Right.

3 Q That number is 1,429 mg. per liter, and what does
4 Joanna Thamke record it as?

5 A 1,170.

6 Q And that appears to be the same test, doesn't it?

7 A It appears to be, yes. I see those are the
8 figures here.

9 (AT THIS TIME, THE COURT REPORTER MARKED DEPOSITION
10 EXHIBIT 28 FOR IDENTIFICATION PURPOSES.)

11 Q And then there was a test run shortly thereafter,
12 I think, two to three months after that Astro-Chem Lab test
13 in November of 1994, that was done by Energy Laboratories
14 in February of 1995. Do you recall this test?

15 A I've seen a lot of these -- this Energy
16 Laboratories papers in my documentation, and I'm pretty
17 sure, but I can't be positive, that I've seen this exact.

18 Q This appears to be on your well, again?

19 A My name's on there.

20 Q Do you know who ran this test? Who performed it?

21 A No, I don't recall.

22 Q Do you know why a different test would be run two
23 to three months after that Astro-Chem test? Do you recall
24 why that was done?

25 A Well, I think that we've requested even more than
26 that, just so that we knew how the water was decreasing in
27 quality. And so, you know, like Deb Madison, my husband
28 was visiting with her several times during this time period

Page 25

Page 27

1 because we were concerned about our livestock and also
2 about our own, whether we should be using this for our
3 cooking -- because we still did after we -- and then we
4 decided that we are definitely not going to cook with it
5 any more. But because of the fact that our water was
6 decreasing in the quality of the water, that we felt that
7 we wanted more tests done.

8 Q Why did you want a second test done less than
9 three months after the first?

10 A I have no idea why it was done, but -----

11 MR. DOLAN: Can we go off the record a second?

12 MR. FAGAN: Sure.

13 (OFF THE RECORD FROM 11:14 TO 11:15 A.M.)

14 Q (By Mr. Fagan) Do you believe that second
15 exhibit 28, second test, was actually the same test as
16 Exhibit 27?

17 A The numbers don't -- aren't all the same, so I
18 would say no.

19 Q So it might be a different test?

20 A It could be a different test.

21 Q And you don't recall why the second test was run?

22 A I do not.

23 Q And when these two tests were done in November of
24 1994 and January or February of 1995, what was the water
25 quality at your house?

26 A 1994 to '95, we had potable drinking water. We
27 were actually drinking the water.

28 Q And you just moved on the property in November?

Page 26

Page 28

1 A In November of '94. And we would not have moved
2 onto that property if our water was not potable. We made
3 that very clear. And, um, we even told them not to even
4 start our septic tank or anything else, not even change
5 that. My sister and her son were farming that property, so
6 when we moved on it it was wheat stubble. But we didn't
7 want to move onto that property until we absolutely knew we
8 had potable water.

9 Q And so when these two tests were run, you had
10 moved onto the property, right?

11 A Yes.

12 Q So were you satisfied with the water when you
13 moved onto the property?

14 A It was drinkable.

15 Q Then why the concern to run two tests in three
16 months?

17 MR. DOLAN: Objection, she said she didn't know why.

18 A (By Deponent) I don't know why -----

19 MR. DOLAN: She didn't know why the tests were run.

20 Q (By Mr. Fagan) Okay, I won't beat it to death.
21 Ever find any -- has there ever been any finding of benzene
22 in any of your well samples?

23 A Not that I recall.

24 Q On any -- not just those two tests, any test
25 that's been run, do you know, no benzene finding?

26 A But benzene has been located in a well just north
27 of us, like a mile, mile and a half; and we are very, very
28 concerned about that as far as our health is concerned.

1 Q Which well is that?

2 A Um-m, I'm not sure. But I know that there's
3 benzene found in wells. In fact, my sister had a trace of
4 it in hers.

5 Q What's your sister's name?

6 A Audrey Kim.

7 Q And did you say her property was about four miles
8 north of yours?

9 A Um-hm, (Deponent indicates yes.) approximately.

10 Q And who found that? Who ran the tests that -----

11 A I don't know. It was one of the tests, I think it
12 was, came out of the USGS, ---

13 Q Your sister's?

14 A --- but that's -- I don't know. Have any idea.
15 Yes.

16 Q So you think the benzene finding might be in the
17 USGS report?

18 A Well, no. I'm not even -- I don't know enough
19 about her particular water system or quality or whatever.
20 I would like to just stick to our own. I just mentioned
21 that because we are threatened by that, that it could move
22 in because of how our water quality has decreased. That's
23 the only reason I mentioned it. I don't know anything
24 about my sister's situation and the quality of her water.

25 Q We're just trying to find out, you know, the whole
26 picture, so we need to know; if there's people that have
27 found benzene in their wells, we need to know that. So you
28 -- so I guess you think your sister's well's been tested

1 positive for benzene, but you don't entirely know that for
2 sure.

3 A I don't know the amount, I don't know who did it,
4 I don't know when it was done. I just heard that.

5 Q She's told you that there was benzene -- and then
6 you've also heard from friends or neighbors that somebody
7 north of you has had benzene in their well, too?

8 A Right.

9 Q But you're not sure whose well that is?

10 A No.

11 Q Do you recall who told you that?

12 A No, I don't.

13 Q Do you recall when you heard that?

14 A Um, I think we've heard it a couple of times. In
15 fact, I think I heard from Deb Madison. But I'm not
16 positive, so.

17 Q How much oil field activity is around your
18 property?

19 A There isn't any directly. How far -- like what
20 are you talking about?

21 Q Can you see any from your property?

22 A Um, not exactly from our home, no.

23 Q But somewhere on your property, you can -- if
24 you're away from the home, you can see some?

25 A We could probably -- I've never been down in the
26 far south section of our pasture. If you look north,
27 there's a possibility that we could see it from there, but
28 I'm not positive.

Page 29

Page 31

1 Q Okay. But there are oil activities around your
2 property, though? You're aware of those?
3 A Oh, yes. Mostly north.
4 Q Has there been any seismograph activity around
5 your property?
6 A Not to my knowledge.
7 Q Are you aware of seismograph activity anywhere
8 around the Poplar oil field?
9 A Oh, I hear about it, yes.
10 Q And who do you hear about it from?
11 A Just different people. You know, I mean, we have
12 friends who are involved in that; and I don't have any
13 names, and I don't have any times, and I don't know how
14 many times that I've heard of it. But I'm from here, so
15 I've been involved with the -- when the discovery started
16 in 1950, so.
17 Q So you're pretty well aware of that seismographic
18 activity?
19 A I'm not pretty well aware. I just said that I'm
20 aware.
21 Q Okay. When did you first suspect that oil
22 activities might be causing the water on your property to
23 deteriorate?
24 A Well, um, I would say, when we got that report
25 from Thamke, whatever her name is. Thamke.
26 Q The USGS report?
27 A Um-hm. (Indicates yes.)
28 Q Had you never thought about it beforehand?

Page 30

1 A There's a possibility. You know, you always sit
2 and discuss, why could this be happening. You know, we had
3 good water, why is our water not of good quality any more?
4 And, you know, I guess, we probably talked about the
5 possibility, but we never really knew that this -- the
6 activity, oil well activity, could cause this from where we
7 are.
8 Q What made you think that oil activities might
9 possibly be causing it? What was it about the oil
10 activities that made you think that that might be behind
11 the water problems?
12 A Prior to the report ----
13 Q Yeah.
14 A --- coming out?
15 Q You said you sat around and talked about it, well,
16 maybe that's causing ----
17 A Well, I guess that, ah, you know, just thinking
18 about how could the aquifer under the ground be changed.
19 And, um, the only way that we felt that it possibly could
20 be changed is by oil activity. Because, I mean, we know of
21 people that have lived out there that have had good water
22 for years, and now their water is changing also. And this
23 is, I mean, knowledge all over the town.
24 Q Rene Martell was here yesterday and was deposed,
25 and he told us that he'd heard about a lawsuit with Murphy
26 Oil years ago involving a farmer named Bud Lien, I think.
27 Had you ever heard about that lawsuit?
28 A Yes, I did, but I didn't -- it didn't come to my

1 mind when we were -- you know, when we were going through
2 this decrease in the quality of our water.
3 Q How did you hear about that lawsuit, do you
4 recall? Did you read about it in the papers or?
5 A I have no idea. I don't think I was here at the
6 time. So I think that this just came up. It could be at
7 the Tribal Chambers. I worked for the Tribe. You know, and
8 I'm not sure where I heard.
9 Q Did that lawsuit make you think about the oil
10 companies being responsible for your ground water
11 contamination?
12 A I don't think that that was even brought to my
13 mind again. You know, I might have heard about it years
14 and years ago when it happened. But until after all of
15 this started, that we knew that it was -- from the USGS
16 report, that it was.
17 Q Were you aware that the USGS was out there taking
18 samples and was preparing a report before it came out?
19 A Not very far before it came out.
20 Q And so it wasn't a surprise to you when the report
21 came out?
22 A No.
23 Q You knew they were out there doing some work. Had
24 you heard about it beforehand, before they were out in the
25 field, like through the Tribal government that they were
26 going to look into it?
27 A I'm not sure. You know, I might be confused on
28 the dates. I'm getting old here. My memory is going. But

Page 32

1 I feel around that time that we, um, smelled -- there was
2 an offensive smell and, um, taste to the water that, ah, we
3 -- or my husband talked with Deb Madison, and she had just
4 stated some certain things that the Tribe was doing that
5 she heard was going on or whatever. It was just all
6 hearsay.
7 Q Looking into the water quality?
8 A Right.
9 Q Did you ever talk with neighbors and friends about
10 it?
11 A Um, I didn't. I'm not sure if my husband did or
12 not.
13 Q Have you ever talked with any Marathon Oil
14 employees?
15 A No.
16 Q How about Texas Oil and Gas?
17 A No.
18 Q Are you aware of any wells that either of those
19 companies operated?
20 A No.
21 Q Donna, what damages do you attribute to the poor
22 water quality? What do you think is causing ----
23 A Our whole homestead. We're -- are we going to be
24 able to exist on that land and for how long, you know. And
25 I think that that's our main concern that it has decreased
26 the quality of our life on the land. We are not able to
27 grow the produce that we feel that we should be able to.
28 And we have 40 acres, you know. There's a lot of land

Page 33

1 there for activity. What we did is we took a wheat stubble
2 field and turned it into an oasis out there. I mean, we
3 have underground water. No one close to us have put in the
4 time, money and the energy into their property as we have
5 because we own the land. It was left by my father.

6 Q So do you think the property's worth less now then
7 when you moved on there in 1994?

8 A Course, who wants to move -- we wouldn't -- we
9 didn't want to move on the property if it did not have
10 potable water. How could we possibly expect anybody else
11 to.

12 Q So I'm not trying to be rude, but you said you
13 made it into an oasis?

14 A Um-hm. (Indicates yes.)

15 Q And that was only for that first year or -- I

16 assume it's not an oasis anymore, or is that not correct?

17 A Oh, it is, but it is deteriorating. Our lawn is -
18 - we don't know how long it's going to last. We have moved
19 in two rows of caragana, about 500 plants. We have about
20 75 different berry plants that we wanted to can, be able to
21 have for our future. And we want this land -- we wanted
22 this land to fix it up; and we have a daughter and
23 grandkids, you know, that it would be available to them.

24 Q Do you have any physical injuries that you would
25 say were caused by the water?

26 A Um, no, the only thing that we really noticed was
27 that our skin is super dry. We have to continue ----

28 Q Any open sores?

Page 34

1 A Not that we would, you know ----

2 Q That you're aware of?

3 A Aware of, that would be caused by that.

4 Q Now, you provided, through Mr. Dolan recently, a
5 grant application for a business named North 40 Enterprise.

6 A That was done in 1995, and we submitted that
7 business plan.

8 Q I'm going to give you a copy of it, and we'll
9 enter it as an exhibit.

10 (AS THIS TIME, THE COURT REPORTER MARKED DEPOSITION
11 EXHIBIT 29 FOR IDENTIFICATION PURPOSES.)

12 Q (By Mr. Fagan) Where was North 40 Enterprise
13 going to be located at?

14 A (By Deponent) The home office would have been on
15 our property.

16 Q Would it have been in your home?

17 A Yes. And my son-in-law. We both lived on that
18 same property in different dwellings.

19 Q And the three owners would have been yourself,
20 your husband and your son-in-law?

21 A Right. And to be able to contract or to bid on
22 contracts through the Housing, my being an enrolled member.
23 I own 51%.

24 Q And can you describe the business idea behind the
25 North 40 Enterprise? What did you intend to do with it?

26 A Well, we wanted to get our son-in-law -- and he
27 did work with my husband and do a lot of landscaping and
28 tree trimming, and we also helped him with some

Page 35

1 construction things that he -- he was a construction --
2 He's been in construction since, I would say, 1970 with his
3 father and brother out in Oregon, and he moved back to get
4 involved so that our family would be together. And, um, we
5 were going to get into construction business. We
6 definitely wanted the greenhouse because we wanted -- my
7 husband worked in a greenhouse in the '60's down in
8 Billings for several, several years, so he was very
9 familiar with the type of plants that would be profitable
10 to sell. And, um, this would eliminate him having to
11 travel down to Billings to do tree work down there. And,
12 um, so we wanted that greenhouse -- and there was -- we
13 wanted to get into the retail business of the plants, plus
14 also my husband can build a lot of things and so could my
15 son-in-law from birdhouses to, you know, some kind of
16 retail business. And, um, there were other things, ideas,
17 that we had for -- I don't know if we specifically stated
18 them in the plan. We thought we'd start with that that we
19 really knew.

20 Q Was it primarily construction, landscaping and the
21 greenhouse, is that the main ----

22 A Um-hm. (Indicates yes.)

23 Q And where was the funding for the company going to
24 come from?

25 A Well, there was, at that time, the Tribe had a
26 small entrepreneurial program that we received some funds
27 from. And, um, also we were hoping that we could get
28 everything started and so that we could put back into the

Page 36

1 company and, um, to be able to plan for the greenhouse, to
2 be able to build a nice building out there. And we had an
3 exact spot that we wanted to place it that would be, um,
4 convenient for people to come out and to purchase all of
5 the retail items that we had.

6 Q So your idea with the greenhouse was to make it a
7 retail greenhouse?

8 A Yes. And there is not one in Poplar. The closest
9 one would be in Wolf Point at Friesen's. And, um, I felt
10 that with the knowledge that my husband had and my son-in-
11 law had, that we could really do a fantastic business out
12 there being that close to town.

13 Q And did you have some funds of your own to put
14 into this business?

15 A Yes, we did.

16 Q And how much was that? How much did you put in to
17 start with?

18 A Well, I don't even know if we had, um, determined
19 that. I think it's in our plan the amount that we had in
20 our checking account and so forth. But with the
21 partnership that we formed, we actually opened a checking
22 account and money was going back in. And we would have put
23 more in had we needed it in order to build the building and
24 to start the business.

25 Q I don't think I -- in this plan we have here, this
26 business plan dated March '95 that's part of the exhibit,
27 I don't believe there's anything in here about financing,
28 is there? I don't recall seeing anything about -- unless

Page 37

1 I missed it. Was there a different plan that you prepared?
 2 A No, this is it.
 3 Q Did you prepare this plan?
 4 A I think there was a question on -- (A phone call
 5 momentarily interrupted the deposition.) And, you know,
 6 after we had submitted this, we were working on projections
 7 and everything, and, ah ----
 8 Q You know, it looks like to me, Donna, we don't
 9 have all the pages on here. There's financial statements
 10 from you and your husband and I think it's your son-in-law?
 11 A Um-hm. (Indicates yes.)
 12 Q And those don't appear to be part of this.
 13 A Part of it, okay.
 14 Q Yeah. So maybe that was it. Do you have a full
 15 copy of the business plan ----
 16 A Yes.
 17 Q --- that contains that information? Could we get
 18 a copy of that?
 19 A Sure.
 20 Q It looks like there's a few pages -- yeah, the
 21 financial stuff is missing. It's in the Table of Contents
 22 but it's not ----
 23 MR. DOLAN: Okay.
 24 Q (By Mr. Fagan) How much money did you plan to put
 25 in yourself to start this? Had you guys thought about how
 26 much it would take?
 27 A (By Deponent) No. Because we hadn't gotten that
 28 far in determining -- we had not done the research to

Page 38

1 determine the cost of a greenhouse. We had sent away and
 2 we do have booklets and pamphlets on this, that you totally
 3 know exactly, you know, running the line out there from the
 4 well, you know, having the fans and everything that you
 5 need for a greenhouse. We hadn't come down to a specific,
 6 because that wasn't now. That was still in the future.
 7 This is a five year plan. So we knew that we had to get
 8 going on the construction at that particular time. And to
 9 be able to -- for my son-in-law to be able to afford the,
 10 you know, working in Poplar.
 11 Q So this was -- the idea in here was going to take
 12 five years to ----
 13 A Not necessarily. I said it's a five year plan
 14 that we would have had that in the workings once we got the
 15 ground -- I mean, the business off the ground.
 16 Q So it sounds like the financing was a little bit
 17 vague. You weren't entirely sure ----
 18 A Well, no, I'm sure that, um, being a minority and
 19 being a woman, that I'm sure that even if we -- and we had
 20 talked about going to the Small Business Association or
 21 Small Business Organization. And, you know, I mean,
 22 there's always -- I know that my job that I have and, you
 23 know, I do make sufficient, and, ah, I don't -- I don't --
 24 we didn't feel that there was a threat to not having the
 25 sufficient amount of money to start a greenhouse, because
 26 seeds aren't that expensive. You know, when you look at
 27 the outlay of a business such as this, the building is your
 28 main, I guess, ----

Page 39

1 Q Need.
 2 A --- need, and, I guess, costly cost.
 3 Q Have you got an estimate of what it would cost to
 4 build the greenhouse?
 5 A We do. We have several from different places, and
 6 we're ordering more. We'd still like to do this. And
 7 we're hoping that, you know, that our -- that we will have
 8 quality water, but that's speculation again, so.
 9 Q You've actually -- you said you're ordering
 10 estimates on what it cost to build a greenhouse?
 11 A No, we're just looking at different businesses
 12 that are out there, you know. I mean, even if we have to
 13 move, we would still like a greenhouse someday.
 14 Q Have you actually gone as far to get a bid from a
 15 construction company and what they would charge you to
 16 build a greenhouse?
 17 A I'm sure that that's included in some of our --
 18 but, I mean, that's how -- that's ----
 19 Q Do you have documents on that?
 20 A No, we don't.
 21 Q Have you just informally talked with people about
 22 it? Haven't gone that far?
 23 A Well, you know, I'm not sure. We have information
 24 from different places. I don't know, maybe two or three,
 25 that talk about what is needed for a greenhouse. We have
 26 not got into that much detail as to how we're going to come
 27 up with the money to build it; and because our water's bad.
 28 We can't build it now, anyway. So we haven't seriously

Page 40

1 went into that part of our five year business plan. I
 2 mean, we can't put in a greenhouse on our property and not
 3 be able to water the plants. And to do all the research it
 4 would take to determine what kind of plants we could grow
 5 with the quality of water we have is -- we haven't even
 6 considered.
 7 Q What's happened with the North 40 Enterprises.
 8 Anything since back in March of '95?
 9 A No, my son-in-law and my daughter moved back out
 10 to Oregon; and, um, we have not dissolved the partnership,
 11 but there's been no activity for a couple of years.
 12 Q When did they move out to Oregon?
 13 A Probably in '97.
 14 Q Did you actually go as far to form a legal
 15 partnership?
 16 A Yes.
 17 Q Did you go through an attorney or?
 18 A Ah, I think we did it with our CPA.
 19 Q So back in March of 1995, I believe you applied
 20 for a grant in November of 1995. What happened? Did you
 21 do anything with North 40 Enterprise?
 22 A With the money that we received from the ----
 23 Q Did you get the grant? This is a grant
 24 application here in the front page of the exhibit for
 25 \$1,000 from ----
 26 A Oh, okay, yes, we did get the grant.
 27 Q And, so, what happened in 1995 with North 40
 28 Enterprises, did you guys take any steps to do anything

Page 41

Page 43

1 with it?

2 A Yes, the North 40 was operable from 1995 to 1997
3 when my son-in-law moved. And it's still -- we still have
4 that -- I mean, we can still utilize that partnership. You
5 know, it was not dissolved. It was ----- there's non-
6 activity.

7 Q So from 1995 to 1997, you actually did perform
8 landscaping and construction services?

9 A Um-hm. (Indicates yes.)

10 Q And so, basically, you did do some things with
11 North 40 Enterprises for those two years, but you never got
12 to the greenhouse, is that correct?

13 A Right.

14 Q And why did you not get to the greenhouse? Why
15 did you not pursue that?

16 A Well, um, I don't know why. That was in our plan,
17 and we definitely were going to do it, and we would still
18 like to have it, but, um -----

19 Q You just haven't got around to doing that part
20 yet?

21 A Haven't done it, right.

22 Q And now you've put a claim in in this lawsuit for
23 \$150,000 in lost earnings from that greenhouse.

24 A Um-hm. And we feel that that amount is very, very
25 conservative.

26 Q And what do you base that amount on, how did you
27 compute that?

28 A Um, from my husband's past knowledge of the

1 claim? Is there anything else?

2 A Well, um -- I'm getting so confused. Um. . .

3 MR. DOLAN: Need a break?

4 A (By Deponent) Yes, please.

5 (AT THIS TIME, A SHORT BREAK WAS TAKEN FROM 11:39 TO 11:45
6 A.M.)

7 Q (By Mr. Fagan) We're back after a short break.

8 Donna, and I'd ask you if you had any additional damages
9 you could think of beyond the property value and the lost
10 business income from the greenhouse? Did you think of
11 anything else?

12 A (By Deponent) Out of pocket expenses that we've
13 had.

14 Q Such as?

15 A Prior to the delivery of water, we would have to
16 go into town and we bought bottled water. And, so, we live
17 like six miles, you know, north and east of Poplar. We had
18 to drive into town every day to get water; and the more you
19 use it for cooking, of course, the more you need. So --
20 and we had the mileage that the water, bottled water, and,
21 um -----

22 Q And that was beginning about 1997, is that right,
23 you quit drinking the water out there?

24 A Yes. Um-hm.

25 Q Anything else you can think of?

26 A To when -- the fall of '99 when they delivered
27 that. And, um, also we had to put a water conditioning
28 unit on our water, and, ah, it started out at 16.75; and

Page 42

Page 44

1 greenhouse and what we felt, but, you know, it's -- um, we
2 haven't really gone into looking at, which we will, you
3 know, someone that can do a -- I need to sit down and do
4 some projections, but I really do feel that we were -- We
5 went and sat down, my husband and I, and said, okay, this
6 is what it possibly would have cost us to get the seeds
7 and, etc., once the buildings built, and then this is what
8 we felt we could sell, and this is what we came up with
9 this. It was a discussion, yes.

10 Q So the two of you sat down and figured it up a
11 little bit, and you came up with \$150,000. Did you do any
12 research at all to see what other greenhouses make? How
13 about, I think it's Friesens? Is that how you pronounce
14 it?

15 A No, because there's is a lot more than just the
16 greenhouse that we're talking about. I don't think there's
17 anything around close by that would, you know, actually
18 compare with what our thoughts were for our greenhouse.
19 And so, -- and we're talking -- I mean, we'd have to travel
20 major miles to find a comparable business.

21 Q So it sounds like you speculated a little bit
22 about how much you might have made?

23 A Yes.

24 Q I assume you never did a market survey or anything
25 like that to find out -----

26 A No.

27 Q Okay. Do you have any other damages, other than
28 the damages to the property value and the lost earnings

1 because it was still not good, we added another container
2 that came up to about \$36 a month. And so that expense has
3 been there. And, um, we had to, like we said, get some
4 parts for the stock waterer to fix that. We've had to
5 replace several heads on our sprinkler systems. A lot of
6 our -- some of our plants have died. And, you know, um, I
7 think we had some work done on our water pump. But,
8 basically, it's out of pocket expenses.

9 Q Just going back to the greenhouse real quick, the
10 \$150,000 lost income, that's just for the greenhouse,
11 that's not the whole business, right?

12 A Right.

13 Q Just wanted to make sure I was clear on that.

14 A And we feel that that's really conservative.

15 Q Does the water treatment center or system that you
16 put in, that was -- did you put that in back when you moved
17 into -- or moved onto the property? the water treatment
18 system?

19 A Um, I think it was pretty close.

20 Q And why did you do that? The water was potable
21 then. Why did you put in the water treatment system, do
22 you recall?

23 A No. We also had other expenses, you know, like
24 for the cost of our buying vegetables, because we -- I
25 mean, we have a huge freezer. We were packing them while
26 we froze them, and also our -- we have a tiered strawberry
27 bed. It's all rocked and it's really nice. And our
28 strawberries, we don't have one left.

Page 45

Page 47

1 Q They won't grow?
 2 A Um-hm, so.
 3 Q Did they grow before?
 4 A Unhunh. (Indicates yes.)
 5 Q What year did they quit growing, do you recall?
 6 A Um, they grew one year. One year we had a few,
 7 but they -- I mean, they didn't look as good as others that
 8 we've seen, but, um -- so I don't know. That must have
 9 been 1996.
 10 Q Do you still use your water treatment system?
 11 A Yes.
 12 Q What do you use it for if you're not drinking the
 13 water?
 14 A We still wash clothes out there and shower.
 15 Q And so you've had that pretty much the whole time
 16 you've lived on the property?
 17 A Yes.
 18 MR. FAGAN: I think that's all the questions I have for
 19 you, Donna. Thank you.
 20 EXAMINATION BY MR. ROSS:
 21 Q Donna, my name is John Ross. I represent Pioneer
 22 Natural Resources.
 23 (AT THIS TIME, THE COURT REPORTER MARKED DEPOSITION
 24 EXHIBIT 30 FOR IDENTIFICATION PURPOSES.)
 25 Q (By Mr. Ross) I'll show you what's been marked as
 26 Exhibit 30, and I don't believe this is in the record. Can
 27 you identify that for us, please?
 28 A (By Deponent) Yes.

Page 46

1 Q And what is it?
 2 A This was identifying the property that was left to
 3 me when my father passed away. It was in his will and
 4 testament.
 5 Q And I see on the second page, it leaves property
 6 to Donna Lee Buckles Metier. Is that you?
 7 A Yes. I was married. That was my first married
 8 name. I was married to David Metier, is how you pronounce
 9 it.
 10 Q Do you or your family -- I see the name Buckles.
 11 Do they have any interest or have they had any interest in
 12 oil production in the East Poplar oil field?
 13 A I think that they have, but I don't know the
 14 amount and the quantity or anything or the -- you know, how
 15 many wells.
 16 Q Do you know of any of the wells that your family
 17 may have had an interest in? any particular wells or
 18 location of any particular wells?
 19 A No. I don't know the exact location is what I've
 20 stated.
 21 Q Are you familiar with the location of the Biere
 22 well?
 23 A No, I'm not. See, I moved from here in 1961, and
 24 I didn't return until 1989.
 25 Q Okay. Do you have any income statements that
 26 would reflect the income of the North 40 from 1995 to 1970?
 27 any income tax returns or any other financial statements
 28 that would show what -----

1 A I don't have all of them, but I do -- I can. My
 2 son-in-law would have them or our CPA. We had a CPA here
 3 in town.
 4 Q Could we get a copy of those, please?
 5 A Um-hm. Yes.
 6 Q What greenhouse did your husband work in in
 7 Billings?
 8 A It was on Poly, Salsbury.
 9 MR. WHITMER: It's no longer in business.
 10 A (By Deponent) He was working there when I met him
 11 in 1961.
 12 (AT THIS TIME, THE COURT REPORTER MARKED DEPOSITION
 13 EXHIBIT 31 FOR IDENTIFICATION PURPOSES.)
 14 Q (By Mr. Ross) I'm just going to show you the
 15 document that your husband gave me during the break, which
 16 I've marked as Exhibit 31. Are those documents that you've
 17 seen and are you familiar with?
 18 A (By Deponent) I've read parts of them, but he's
 19 done more research on this; and he's read it and then
 20 informed me.
 21 Q These are documents that he's received regarding
 22 the vegetation, is that correct?
 23 A The -- yes, the -- how sensitive different plants
 24 are to different chemicals.
 25 MR. ROSS: I have no further questions. Thank you.
 26 EXAMINATION BY MR. STERUP:
 27 Q Donna, I'm Rob Sterup representing Samson
 28 Hydrocarbons. You mentioned that you lived elsewhere from

Page 48.

1 1961 to 1989.
 2 A Um-hm. (Indicates yes.)
 3 Q Where did you live?
 4 A We moved a lot all over the state. We lived in
 5 Missoula, Bozeman, Helena. We had different businesses,
 6 and I ended up out in Portland from '69 to -- or '79 to
 7 '85. And, um, we moved back into Billings, and we moved
 8 home 1989.
 9 Q Why did you move back to Poplar in 1989?
 10 A Um, I was ready to either become a teacher or I
 11 needed a change in my profession. I was doing
 12 electrolysis, and I had major back and neck problems; and
 13 so I moved back here to change my profession.
 14 Q You got the job at the Community College, and then
 15 moved back to Poplar, I take it.
 16 A No, I moved back without a job and just looked
 17 around and submitted different applications for different
 18 positions.
 19 Q You moved to the current location, the 40 acre
 20 site, in November 1994, is that accurate?
 21 A Yes.
 22 Q Where were you living from 1989 until November
 23 1994?
 24 A When I first moved home, I lived with my mother.
 25 She lives at 314 D Street West in downtown -- in Poplar.
 26 And, um, my husband lost her -- I mean, my sister lost her
 27 husband in 1991, so I moved in with her to help her with
 28 her farm and ranching. But I was working for the Tribes

Page 49

1 for seven -- Well, from 1990 to 1996, I worked for the
 2 Fort Peck Tribes.
 3 Q Had you been planning to move to the 40 acre
 4 location for sometime before November 1994?
 5 A Oh, yes. We talked about it. In fact, we looked
 6 around for different land that was available because my
 7 sister was farming that particular piece; but she said,
 8 this is yours, you should have it, and, you know, it was
 9 mine. But we decided to move there. Once we knew the
 10 water was there.
 11 Q Yeah, you mentioned that it was important to you
 12 to find out the water was potable. Why was that a source
 13 of concern to you?
 14 A Because we knew that the history -- or the -- not
 15 the history. We knew that some of the people in the area
 16 had bad water. In Poplar, right downtown Poplar, it's
 17 terrible water. And we did not want to move on any
 18 property, do the -- invest the money, the time and the
 19 energy unless we could live there for the rest of our
 20 lives.
 21 Q Who are your closest neighbors at the 40 acre
 22 location?
 23 A Bleazards to the east of us were.
 24 Q Alright, and who else?
 25 A There's George Ricker to the north of us, and
 26 Graingers to the south of us.
 27 Q Did you talk to any of those folks about water
 28 quality issues before deciding to move out to the 40 acre

Page 50

1 location?
 2 A Um, yes. There's Loegerings, too, that is a
 3 little bit -- well, they're south of Bleazards, and they
 4 had excellent water.
 5 Q So you talked -----
 6 A And so we did, you know, but -- we also talked to
 7 Rod Bruner. Rod is the one that said, well, let's drill
 8 the well and see what kind of water there is.
 9 Q What did Bleazards report to you about their
 10 water?
 11 A Um, I don't think we talked to them. We didn't
 12 know them.
 13 Q How about the Rickers?
 14 A The Rickers I know, but I don't think I talked to
 15 her about the water. Maybe I did -- 'cause she was on --
 16 I don't know. I don't think I did -- we did talk to any of
 17 them. My husband might have, but I don't think I did.
 18 Q Okay, and just to close the loop, the Graingers,
 19 did you recall speaking to them about water quality before
 20 you moved out to the site in November 1994?
 21 A No.
 22 Q And to determine whether or not the water was
 23 potable, you had some tests conducted by Bruner, is that
 24 accurate?
 25 A Well, we made the decision to move on our 40
 26 acres, we contacted Bruner, submitted an application to his
 27 office to drill a well to determine if the water was
 28 drinkable. And that statement was specifically on that

Page 51

1 document.
 2 Q Did you do anything else to investigate the water
 3 quality before making the decision to move out to that 40
 4 acre location?
 5 A No. That was number one concern.
 6 Q Do you recall ever speaking with anyone from
 7 either Grace Petroleum or Samson Hydrocarbons?
 8 A Not about the water.
 9 Q About anything else?
 10 A One of the Murphy guys, a friend of ours, but
 11 water was never discussed.
 12 Q And I was focusing on either Grace Petroleum or
 13 Samson Hydrocarbons. Do you recall ever talking to anyone
 14 from either of those companies?
 15 A Not about water.
 16 Q About anything else?
 17 A Just friend stuff, you know. We had a close
 18 friend that worked for Grace and a close friend that worked
 19 for Murphy, and that water issue never came up.
 20 Q Who is your friend that worked for Grace?
 21 A Ted Nees, who passed away not long ago.
 22 MR. STERUP: That's all that I have.
 23 EXAMINATION BY MR. WEBSTER:
 24 Q Donna, my name is Mike Webster, and I'm the
 25 attorney who represents Murphy Exploration in this case.
 26 You just mentioned that you had talked to -- or that a
 27 close friend of yours had or does work for Murphy. Who
 28 would that be?

Page 52

1 A Ray Roode.
 2 Q Have you and Ray visited about the water issues?
 3 A No, never.
 4 Q Have you visited with any other Murphy employees,
 5 representatives, about the water?
 6 A No. Not to my knowledge.
 7 Q Because I, unfortunately, and I apologize, arrived
 8 and missed the very beginning of your questions and answers
 9 here, Donna. Did you work from 1997 through 1999?
 10 A Yes.
 11 Q And where?
 12 A 1997, 1999, I've been working at the college.
 13 Q At the college. And that's in Poplar?
 14 A It's the Fort Peck Community College. It's a
 15 Tribally owned college.
 16 Q And did that require you to travel into Poplar
 17 every day to do your work?
 18 A Yes, it did.
 19 Q One of the claims that's here is for mileage to go
 20 get water; and I'm wondering, did you not just get water
 21 when you'd come into work or did you go home and then come
 22 back specifically to get water?
 23 A I probably brought home water sometimes when my
 24 husband didn't come. I don't -- my work day, because we
 25 cover distance learning classes that can run in the
 26 evenings, my work day is pretty hectic, and so my husband
 27 did the majority of the shopping.
 28 Q You indicated, I think, that you had a number of

Page 53

1 conversations with Deb Madison.

2 A Not myself personally. I talked to Deb a couple
3 of short conversations. I know my husband has stopped in
4 her office on different occasions. And I don't know if he
5 actually got to speak to Deb because Deb isn't in her
6 office all the time.

7 Q Do you recall the first time when you might have
8 spoken with Deb Madison?

9 A I know it was after the report came out, but
10 that's the closest I can tell you.

11 Q Did you ever speak to any of the other folks at
12 the other agencies or offices at the Tribe about your water
13 issues?

14 A No. Not to my knowledge.

15 Q Did you ever talk to the Indian Health Service
16 people other than Rod Bruner at the very outset of moving
17 onto your property about the water?

18 A No, I did not. Not to my knowledge.

19 Q Okay.

20 A I know that different -- well, no. It wasn't
21 about the water.

22 Q In terms of the water that's now being provided,
23 is that generally working out fairly well, that delivery
24 system?

25 A I would say, yeah.

26 Q Okay. Do you have adequate water provided for
27 drinking and cooking? Has that been an issue?

28 A No. But it doesn't compare to going to the water

Page 54

1 faucet -- I mean, the faucet and turning on and having
2 fresh clear water, you know. There's a big difference to
3 utilizing bottled water and having it on demand.

4 Q When you were talking about the landscaping of
5 your home and the rock work that you had put in and some of
6 the efforts that you had done to make your home a nice
7 place to be, you'd indicated that you'd put rock work
8 against your home, is that right?

9 A Um-hm. Um-hm. (Indicates yes.)

10 Q And I believe you said the reason you did that was
11 to keep rust stains from the house?

12 A Um-hm. (Indicates yes.)

13 Q Is the iron problem a problem out there in your
14 water?

15 A I don't know what it is. I don't know what -- if
16 it's iron or not. But it does -- the water from the hose
17 or our sprinkler system, if it touches our paint on our
18 house, it does turn yellow.

19 Q Evidently that was a problem from the outset of
20 living there? a problem that you recognized?

21 A Not to the outset, because it took us a while to
22 get the rock around the house.

23 Q Did you do some watering before you ----

24 A I guess, you know, we -- I noticed -- excuse me.

25 I guess I noticed that at the Tribal buildings. I don't
26 know if you have been to Poplar recently, but all of our
27 buildings on our campus and the Tribal building are rust
28 color; and I guess that's -- we just took that precaution.

Page 55

1 Q And were you aware that one of these earlier
2 reports -- I don't remember which number it is here, but
3 it's the Energy Labs report, Exhibit 28 -- at the bottom,
4 it -- In 1995, it says that the iron and manganese exceed
5 maximum recommendations for drinking water. Do you see
6 where that's on there?

7 A Um-hm. Um-hm. (Indicates yes.)

8 Q And that report, was that in your possession? Do
9 you recall when you would have received that?

10 A No, I don't recall seeing -- the one that I recall
11 seeing is this one from Astro-Chem. This is the one that
12 we looked at -- or I look at the most because this one was
13 done to determine whether we would move on the property or
14 not.

15 Q Going back to Exhibit 28, the handwriting notation
16 that's on the bottom of that note, are you able to -- can
17 you read what has been written there and. . .

18 A Well is south of SWD drainage, 9/27/95, and we're
19 thinking that that's Rod Bruner, but we're not positive.

20 Q And the SWD, does that mean anything to you, those
21 letters?

22 A Not to me.

23 Q If I were to suggest that that meant salt water
24 disposal drainage, would that mean anything to you? Would
25 you know what was meant by salt water disposal?

26 A Um, no.

27 Q Okay. I'm not sure that's what it means, but I
28 wondered. Did any of your family members own a drilling

Page 56

1 company, Whitmer Drilling? Is that a -- I saw a reference
2 to that.

3 A No.

4 Q Have you ever heard of Whitmer Drilling?

5 A I never have. I know that -- well, no, I don't
6 have -- I never -- I wasn't around when there was any
7 drilling or anything going on in Poplar or around the area
8 except for way up north.

9 Q Donna, you've been asked lots of questions. Do
10 you have anything that we haven't asked you that you think
11 you want to tell us?

12 A Well, we are very frustrated, we're discouraged,
13 we're devastated, because we have invested so much of our
14 money, time and energy into our 40 acres, our oasis out
15 there, and it is deteriorating. And we're 58 years old
16 now, and we don't feel that we're going to have the energy
17 or the money if, you know, the water continually gets worse
18 for us to move and start over again.

19 Q Are you familiar with the Fort Peck water system?
20 I'm not sure what the proper name for it is, but the water
21 system that's going to be built.

22 A Water pipeline. Yes, I am. Just from -- I
23 haven't even read the total articles in the newspaper, but,
24 you know, I don't think that that's going to happen in my
25 lifetime. And, um, the Tribe has had a lot of legislation
26 passed by Congress, but the money is not in this pipeline
27 yet; and who knows if it ever will be. And, so, I don't
28 feel that this pipeline is going to make any difference for

Page 57

Page 59

1 us, my husband and I, in our lifetime.

2 Q If it is constructed and it is during your
3 lifetime, I assume though that you would gladly participate
4 and tie in and use that water if it became available?

5 A It depends on the total infrastructure of how this
6 is going to work, you know; and we have no idea. I don't
7 even know if it would be available to us, but that's
8 another thing.

9 Q I just have a couple more quick questions. When
10 the USGS personnel were out doing their sampling and they
11 began -- or when they were out there in the field, did you
12 visit with them, talk to them at all?

13 A No. I might have answered the door or -- I don't
14 even know who was who, to tell you the truth. I work from
15 eight until sometimes ten in the evenings, and so I'm not
16 home during the day.

17 Q Did any other family members that might have been
18 home tell you, at any point during that time, that someone
19 from a government office came by and wanted to take water?
20 Do you recall any of that?

21 A I think my husband told me on a couple of
22 occasions.

23 Q Did he ever -- did you ever hear whether they had
24 indicated what their purpose was or what they thought that
25 the cause of water problems might be?

26 A No.

27 MR. WEBSTER: I don't have anything else.

28 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION WAS THEN

1 CERTIFICATE

2 STATE OF MONTANA)
3 ss.

3 COUNTY OF ROOSEVELT)

4 I, JOANN D. HESER, Official Court Reporter, Fifteenth
5 Judicial District, and a Notary Public duly qualified in and for
6 the State of Montana, hereby certify there came before me the
7 deponent herein, namely DONNA WHITMER, who was by me duly sworn
8 to testify to the truth and nothing but the truth concerning the
9 matters in this cause.

10 I further certify that I was the Official Court Reporter
11 who reported, by means of LANTIER recorder, this deposition. The
12 testimony therein and other proceedings herein contained are a
13 true and correct transcription of the original tapes and my
14 notes, TO THE BEST OF MY ABILITY.

15 I further certify that I am not related in any manner to
16 any party, witness, or counsel and have no financial or other
17 interest in the outcome of the above entitled cause.

18 IN WITNESS WHEREOF, I have hereunto set my hand and affixed
19 my Notarial Seal this 27th day of June, 2001.

20 Joann D. Hesper

21 NOTARY PUBLIC

22 My Comm. exp. 7/2/2004

Page 58

Page 60

1 CONCLUDED AT 12:10 P.M.)

1 DEPONENT'S CERTIFICATE

2 I, DONNA WHITMER, do hereby certify that I have read the
3 foregoing transcript of my testimony and that the same is a
4 full, true and correct record of my deposition except as to any
5 corrections I have listed on the Corrections to Deposition form.

6 _____ Changes and corrections made.

7 _____ No changes or corrections made.

9 DONNA WHITMER

10 Subscribed and sworn to before me this _____ day of
11 _____, 2001.

13 NOTARY PUBLIC for the State of Montana
14 Residing at _____, Montana
15 My Commission expires _____

CORRECTIONS TO DEPOSITION

1

2

3- The Deponent, DONNA WHITMER, states she wishes to make the
4 following changes in testimony as originally sworn:

5 PAGE LINE SHOULD READ REASON

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21 DONNA WHITMER _____

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<p>-S-</p> <p>\$1,000 [1] 40:25 \$150,000 [3] 41:23 42:11 44:10 \$36 [1] 44:2</p> <p>-I-</p> <p>'60's [1] 35:7 '69 [1] 48:6 '75 [1] 14:17 '79 [1] 48:6 '85 [1] 48:7 '94 [10] 6:15 8:4,6 10:22 15:27 17:20 21:4,22 23:19 26:1 '95 [14] 10:26 11:2 14:18 14:24 17:22,22,27 19:14 19:15,25 21:23 25:26 36:26 40:8 '96 [1] 17:23 '97 [11] 11:18,21,26 12:18 13:21 14:22 15:5,7 19:25 21:24 40:13 '98 [2] 16:13 21:25 '99 [4] 21:25,26,26 43:26</p> <p>-1-</p> <p>1,170 [1] 24:5 1,429 [1] 24:3 10:26 [2] 1:23 4:2 10:39 [1] 6:20 10:45 [1] 6:20 11/14/94 [1] 23:11 11:05 [1] 21:18 11:07 [1] 21:18 11:14 [1] 25:13 11:15 [1] 25:13 11:39 [1] 43:5 11:45 [1] 43:5 1200 [1] 2:21 12:10 [1] 58:1 12th [1] 4:2 16.75 [1] 43:28 160 [1] 10:5 1900 [1] 2:13 1950 [1] 29:16 1961 [3] 46:23 47:11 48:1 1970 [2] 35:2 46:26 1983 [1] 6:9 1989 [5] 46:24 48:1,8,9 48:22 1990 [1] 49:1 1991 [1] 48:27 1994 [16] 5:23 6:15,24 9:3 15:26 22:25,28 23:22 24:13 25:24,26 33:7 48:20 48:23 49:4 50:20 1995 [16] 11:8 17:17 19:6</p>	<p>19:7,11,22 24:14 25:24 34:6 40:19,20,27 41:2,7 46:26 55:4 1996 [2] 45:9 49:1 1997 [8] 12:20 22:26 23:22 41:2,7 43:22 52:9 52:12 1999 [2] 52:9,12</p> <p>-2-</p> <p>200 [2] 1:24 4:3 2000 [3] 19:9,13 21:27 2000's [1] 19:15 2001 [4] 1:23 4:3 59:19 60:11 24th [1] 2:17 2559 [1] 2:13 27th [1] 59:19 29 [2] 3:15 34:11</p> <p>-3-</p> <p>30 [3] 3:17 45:24,26 31 [3] 3:18 47:13,16 314 [1] 48:25 315 [1] 2:17 31st [2] 2:9,21 34 [1] 3:16 35 [1] 2:4</p> <p>-4-</p> <p>4-50 [1] 1:20 40 [18] 3:15 32:28 34:5,12 34:25 40:7,21,27 41:2,11 46:26 48:19 49:3,21,28 50:25 51:3 56:14 401 [1] 2:21 45 [2] 3:5,17 47 [2] 3:6,18 490 [1] 2:9</p> <p>-5-</p> <p>50 [1] 7:27 500 [1] 33:19 5000 [1] 10:6 51 [1] 3:7 51% [1] 34:23 58 [1] 56:15 59 [1] 3:8 59101 [1] 2:9 59103 [2] 2:14,22 59103-0849 [1] 2:18 59771-6580 [1] 2:5</p> <p>-6-</p> <p>60 [1] 3:9 61 [1] 3:10 6580 [1] 2:5</p>	<p>-7-</p> <p>7/2/2004 [1] 59:22 7188 [1] 2:22 75 [1] 33:20</p> <p>-8-</p> <p>849 [1] 2:17</p> <p>-9-</p> <p>9/27/95 [1] 55:18 98-108-BLG-JDS [1] 1:9</p> <p>-A-</p> <p>a.m. [8] 1:23 4:2 6:20,20 21:18,18 25:13 43:6 ABILITY [1] 59:14 able [18] 4:19 6:22 8:24 9:6 11:6,9 20:27 32:24,26 32:27 33:20 34:21 36:1,2 38:9,9 40:3 55:16 above [1] 59:17 absolutely [1] 26:7 account [2] 36:20,22 accurate [2] 48:20 50:24 acre [5] 48:19 49:3,21,28 51:4 acres [4] 10:16 32:28 50:26 56:14 Action [1] 3:18 activities [5] 8:9 29:1 29:22 30:8,10 activity [10] 28:17 29:4 29:7,18 30:6,6,20 33:1 40:11 41:6 actual [1] 15:20 added [1] 44:1 addition [1] 5:28 additional [1] 43:8 adequate [1] 53:26 affect [1] 9:20 affected [1] 17:5 affixed [1] 59:18 afford [1] 38:9 again [4] 24:18 31:13 39:8 56:18 against [1] 54:8 agencies [1] 53:12 ago [3] 30:26 31:14 51:21 agree [1] 23:27 al [2] 1:5,8 Alright [3] 5:1 23:2 49:24 always [3] 20:27 30:1 38:22 AMARCO [1] 1:16 amount [6] 28:3 36:19 38:25 41:24,26 46:14</p>	<p>analyses [2] 21:6 22:16 analysis [6] 3:13,14 8:13 8:17,26 23:10 answered [1] 57:13 answers [1] 52:8 anyway [1] 39:28 apologize [1] 52:7 apparent [1] 11:25 appear [1] 37:12 appearances [2] 2:1 4:4 application [6] 3:15 8:7 8:8 34:5 40:24 50:26 applications [1] 48:17 applied [1] 40:19 Approving [1] 3:17 April [1] 21:26 aquifer [1] 30:18 area [7] 6:17 7:8 12:25 15:17 20:19 49:15 56:7 arrived [1] 52:7 art [1] 5:25 articles [1] 56:23 Asparagus [1] 18:13 Association [1] 38:20 assume [4] 21:23 33:16 42:24 57:3 Astro-Chem [7] 23:10 23:21,25 24:1,12,23 55:11 attorney [8] 2:2,7,10,15 2:19 8:27 40:17 51:25 attribute [1] 32:21 Audrey [4] 7:5,11,16 27:6 Audrey's [1] 7:8 Austin [1] 3:17 available [4] 33:23 49:6 57:4,7 aware [12] 12:23 14:8 29:2,7,17,19,20 31:17 32:18 34:2,3 55:1 away [5] 6:8 28:24 38:1 46:3 51:21 awhile [1] 15:24</p> <p>-B-</p> <p>B [1] 2:12 bachelor's [1] 5:25 background [1] 5:24 bad [2] 39:27 49:16 BALDWIN [1] 2:3 barn [4] 10:16,19 15:17 15:22 base [1] 41:26 bathroom [7] 11:25 13:12,17,28 14:5,12,27 bean [2] 18:2,6 beans [5] 18:11 20:2,12 20:19,26 beat [1] 26:20 beautiful [5] 10:27 17:11</p>	<p>17:14 19:18 20:11 became [1] 57:4 become [1] 48:10 bed [1] 44:27 bedroom [3] 12:26,26 13:2 beforehand [2] 29:28 31:24 began [1] 57:11 beginning [2] 43:22 52:8 behind [2] 30:10 34:24 BELLINGHAM [1] 2:12 benzene [9] 26:21,25,26 27:3,16,27 28:1,5,7 berry [1] 33:20 best [5] 10:26 19:7,13,15 59:14 BESTWAY [1] 1:16 better [3] 19:5,21 20:15 between [5] 12:21 13:15 14:5,27 19:26 beyond [1] 43:9 bid [2] 34:21 39:14 Biere [1] 46:21 big [4] 12:17 16:28 19:4 54:2 Billings [15] 1:3 2:9,14 2:18,22 5:26 11:14,15,15 12:11,12 35:8,11 47:7 48:7 birdhouses [1] 35:15 bit [7] 12:21,21,24 38:16 42:11,21 50:3 Bleazards [3] 49:23 50:3 50:9 booklets [1] 38:2 bothered [1] 9:10 bottled [3] 43:16,20 54:3 bottom [2] 55:3,16 bought [1] 43:16 Box [3] 2:5,13,22 Bozman [2] 2:5 48:5 brand [1] 14:24 break [4] 43:3,5,7 47:15 briefly [1] 8:28 bring [2] 5:5,8 brother [1] 35:3 brought [5] 10:17,18 17:7 31:12 52:23 brown [2] 2:16 17:15 Bruner [6] 8:21 50:7,23 50:26 53:16 55:19 Buckles [4] 3:14,17 46:6 46:10 Buckles-Whitmer [2] 3:13,16 Bud [1] 30:26 build [8] 35:14 36:2,23 39:4,10,16,27,28 building [7] 2:4 10:17</p>
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10:18 36:2,23 38:27 54:27 buildings [4] 10:14 42:7 54:25,27 built [3] 10:18 42:7 56:21 business [26] 5:25 10:8 11:9,14,14 12:13 34:5,7 34:24 35:5,13,16 36:11 36:14,24,26 37:15 38:15 38:20,21,27 40:1 42:20 43:10 44:11 47:9 businesses [2] 39:11 48:5 buying [1] 44:24	54:28 coloration [1] 9:16 comfortable [1] 6:23 coming [5] 5:17,18 16:6 21:9 30:14 Comm [1] 59:22 commercial [1] 18:16 Commission [1] 60:14 Community [3] 5:13 48:14 52:14 companies [3] 31:10 32:19 51:14 company [8] 2:7,10,15 4:17 35:23 36:1 39:15 56:1 comparable [1] 42:20 compare [2] 42:18 53:28 compute [1] 41:27 concern [4] 26:15 32:25 49:13 51:5 concerned [3] 25:1 26:28,28 concerning [1] 59:8 CONCLUDED [1] 58:1 condition [1] 15:1 conditioning [1] 43:27 conducted [1] 50:23 Confers [1] 8:27 confused [2] 31:27 43:2 confusing [1] 4:27 confusion [2] 21:20 22:7 Congress [1] 56:26 connection [1] 10:19 conservative [2] 41:25 44:14 considered [1] 40:6 construct [1] 8:14 constructed [1] 57:2 construction [9] 8:9 35:1,1,2,5,20 38:8 39:15 41:8 contacted [1] 50:26 contained [1] 59:12 container [1] 44:1 contains [1] 37:17 contamination [1] 31:11 Contents [1] 37:21 continually [1] 56:17 continue [2] 13:22 33:27 continued [2] 11:20 13:20 contract [1] 34:21 contracts [1] 34:22 convenient [1] 36:4 conversations [2] 53:1 53:3 cook [2] 13:20 25:4 cooking [3] 25:3 43:19	53:27 coordinate [1] 5:21 coordinator [3] 5:12,14 5:15 copies [1] 22:16 copy [4] 34:8 37:15,18 47:4 corn [6] 18:11,18 20:1,11 20:19,26 CORP [1] 1:16 correct [11] 13:28 15:8 18:1 22:26 23:4,25 33:16 41:12 47:22 59:13 60:4 corrections [6] 3:10 60:5,5,6,7 61:1 cost [6] 38:1 39:2,3,10 42:6 44:24 costly [1] 39:2 counsel [2] 4:4 59:16 counted [2] 22:15,15 counting [1] 22:8 COUNTY [1] 59:3 couple [5] 28:14 40:11 53:2 57:9,21 course [2] 33:8 43:19 courses [1] 5:17 Court [10] 1:2 3:8 4:5 22:19 24:9 34:10 45:23 47:12 59:4,10 cover [1] 52:25 covered [1] 22:2 CPA [3] 40:18 47:2,2 crop [11] 3:18 18:6 19:3,5 19:7,9,11,13,28 20:13,25 crops [1] 18:8 Cross [1] 1:14 Cross-Defendants [1] 1:21 CROWLEY [1] 2:8 cucumbers [1] 18:15 Culligan [3] 21:25 22:8 22:9 current [1] 48:19 cut [2] 10:14 18:18 CV [1] 1:9	53:1,2,5,5,8 decided [4] 7:2 13:21 25:4 49:9 deciding [1] 49:28 decision [2] 50:25 51:3 decrease [1] 31:2 decreased [3] 18:7 27:22 32:25 decreasing [2] 24:26 25:6 Decree [1] 3:17 DEFENDANT [1] 23:5 Defendants [2] 1:9,18 Defendants/ [1] 1:13 definite [1] 11:23 definitely [5] 11:24 22:28 25:4 35:6 41:17 degree [2] 5:18,25 delivered [1] 43:26 delivery [2] 43:15 53:23 demand [1] 54:3 deponent [25] 3:1 6:25 12:2 16:4 17:28 19:10,16 20:14,28 22:12,12,23 23:12,23 26:18 27:9 34:14 37:27 43:4,12 45:28 47:10 47:18 59:7 61:3 DEPONENT'S [2] 3:9 60:1 deposed [2] 4:17 30:24 deposition [16] 1:13 3:10 4:1 5:2,3 22:19 24:9 34:10 37:5 45:23 47:12 57:28 59:11 60:4,5 61:1 describe [1] 34:24 detail [1] 39:26 deteriorate [1] 29:23 deteriorating [3] 17:25 33:17 56:15 determine [7] 6:5,22 38:1 40:4 50:22,27 55:13 determined [1] 36:18 determining [1] 37:28 devastated [1] 56:13 development [1] 5:21 Dick [1] 5:7 died [1] 44:6 DIETRICH [1] 2:8 difference [6] 13:15 14:27 16:14 20:16 54:2 56:28 different [26] 5:18 8:26 13:16,27 14:4 18:8 22:16 23:20 24:22 25:19,20 29:11 33:20 34:18 37:1 39:5,11,24 47:23,24 48:5 48:17,17 49:6 53:4,20 difficulty [1] 6:4 diminished [1] 17:6 directly [1] 28:19 discouraged [1] 56:12 discovery [1] 29:15	discuss [1] 30:2 discussed [3] 7:14,20 51:11 discussion [1] 42:9 dishwasher [1] 13:26 disposal [2] 55:24,25 dissolved [3] 23:28 40:10 41:5 distance [4] 5:12,15,17 52:25 Distribution [1] 3:17 District [3] 1:2,3 59:5 DIVISION [1] 1:3 document [2] 47:15 51:1 documentation [1] 24:16 documents [6] 5:5,9 21:12 39:19 47:16,21 doesn't [2] 24:6 53:28 Dolan [17] 2:3,3 4:19 6:11 21:13,14,16 22:3,5,7 23:1 25:11 26:17,19 34:4 37:23 43:3 done [19] 20:5,9 21:22,23 22:10 24:13,24 25:7,8,10 25:23 28:4 34:6 37:28 41:21 44:7 47:19 54:6 55:13 Donna [26] 1:15 3:2,13 3:14,16 4:1,10,14 5:11 22:11,21 32:21 37:8 43:8 45:19,21 46:6 47:27 51:24 52:9 56:9 59:7 60:2,9 61:3 61:21 door [1] 57:13 DORSEY [1] 2:20 down [18] 10:15,17,18 12:11,13 17:14 18:3,28 23:20,28 28:25 35:7,11 35:11 38:5 42:3,5,10 downtown [2] 48:25 49:16 drainage [2] 55:18,24 drastic [2] 12:17,20 Drawer [1] 2:17 drill [2] 50:7,27 drilled [5] 8:3,4,7,11,18 drilling [4] 55:28 56:1,4 56:7 drink [6] 8:24 9:6 13:20 16:18,20,22 drinkable [3] 9:8 26:14 50:28 drinking [12] 11:18,20 13:22 15:7 16:15 19:17 25:26,27 43:23 45:12 53:27 55:5 drive [1] 43:18 dry [1] 33:27 duly [3] 4:11 59:5,7 duplicates [1] 23:24 during [7] 11:15 13:13 24:28 47:15 57:2,16,18
--	---	--	---	--

-C-

-D-

dwellings [1] 34:18	45:26 47:13,16 55:3,15	financing [2] 36:27	Gerald [1] 2:12	hearsay [1] 32:6
-E-	EXHIBITS [1] 3:12	38:16	Gerry [2] 2:11 4:16	hectic [1] 52:26
E [1] 2:8	exist [1] 32:24	finding [4] 22:27 26:21	gladly [1] 57:3	Helena [1] 48:5
early [3] 19:3,4,26	exp [1] 59:22	26:25 27:16	goes [2] 8:2 10:15	help [1] 48:27
earnings [2] 41:23 42:28	expect [1] 33:10	FIRM [1] 2:16	GOETZ [1] 2:3	helped [1] 34:28
east [5] 1:24 4:3 43:17	expense [1] 44:2	first [14] 2:21 4:11 9:2,4	gone [7] 12:10,11,14	hereby [2] 59:6 60:2
46:12 49:23	expenses [3] 43:12 44:8	15:15,19 17:24 19:11 25:9	18:28 39:14,22 42:2	herein [2] 59:7,12
Eastern [1] 5:26	44:23	29:21 33:15 46:7 48:24	good [12] 10:11,20 19:3	hereinbefore [1] 4:4
educational [1] 5:24	expensive [1] 38:26	53:7	19:17 20:13 21:10 23:8	hereunto [1] 59:18
efforts [1] 54:6	expert [1] 21:28	five [6] 11:7 19:1 38:7,12	30:3,3,21 44:1 45:7	hers [1] 27:4
egg [1] 13:9	expires [1] 60:14	38:13 40:1	government [2] 31:25	history [2] 49:14,15
eggs [1] 13:8	explain [1] 4:20	fix [2] 33:22 44:4	57:19	home [25] 7:28 8:16 10:6
eight [4] 21:7,15,16 57:15	Exploration [2] 2:7	floater [1] 16:28	Grace [4] 51:7,12,18,20	10:7 11:21 12:15,16 14:13
eighteen [1] 10:16	51:25	focusing [1] 51:12	gradual [1] 12:3	14:15,19 16:25 17:9 28:22
either [5] 32:18 48:10	extend [1] 5:20	folks [4] 20:18 21:25	Graingers [2] 49:26	28:24 34:14,16 48:8,24
51:7,12,14	extended [1] 5:20	49:27 53:11	50:18	52:21,23 54:5,6,8 57:16
electrolysis [1] 48:12	-F-	follow-up [1] 21:27	Grand [1] 2:4	57:18
eliminate [1] 35:10	fact [6] 18:4 19:2 25:5	following [2] 4:7 61:4	grandkids [1] 33:23	homestead [3] 7:2 11:12
elsewhere [1] 47:28	27:3 28:15 49:5	follows [1] 4:12	grant [5] 34:5 40:20,23	32:23
employees [2] 32:14	Fagan [18] 2:11 3:4 4:13	foregoing [1] 60:3	40:23,26	hoped [1] 16:19
52:4	4:16 6:21 21:15 22:11,21	form [2] 40:14 60:5	grass [1] 17:16	hoping [2] 35:27 39:7
ended [1] 48:6	23:3,7,9 25:12,14 26:20	formed [2] 11:8 36:21	great [1] 18:18	hose [1] 54:16
energy [11] 3:14 10:12	34:12 37:24 43:7 45:18	Fort [4] 5:12 49:2 52:14	green [2] 17:14,15	house [9] 7:25 8:14 12:26
10:20 21:23 24:13,15 33:4	fairly [1] 53:23	56:19	greenhouse [27] 11:7	13:16 17:8 25:25 54:11
49:19 55:3 56:14,16	fall [1] 43:26	forth [2] 12:12 36:20	35:6,7,12,21 36:1,6,7 38:1	54:18,22
enrolled [2] 6:28 34:22	familiar [4] 35:9 46:21	found [5] 21:5,8 27:3,10	38:5,25 39:4,10,13,16,25	household [1] 9:28
enter [1] 34:9	47:17 56:19	27:27	40:2 41:12,14,23 42:1,16	Housing [1] 34:22
Enterprise [5] 3:15 34:5	family [10] 5:27 6:5	four [4] 7:6,12 18:10 27:7	42:18 43:10 44:9,10 47:6	huge [1] 44:25
34:12,25 40:21	18:17,20,22 35:4 46:10	freezer [1] 44:25	greenhouses [1] 42:12	hundred [1] 18:11
Enterprises [3] 40:7,28	46:16 55:28 57:17	fresh [2] 18:21 54:2	grow [2] 6:27 45:6	husband [28] 6:1 10:8,14
41:11	fans [1] 38:4	Friday [1] 17:12	ground [5] 17:14 30:18	11:6 14:21 17:10 18:3
entirely [2] 28:1 38:17	fantastic [1] 36:11	friend [6] 51:10,17,18,18	31:10 38:15,15	20:5 24:27 32:3,11 34:20
entitled [1] 59:17	far [9] 19:28 26:28 28:19	51:20,27	GROUP [1] 1:17	34:27 35:7,14 36:10 37:10
entrepreneurial [1]	28:26 31:19 37:28 39:14	friends [3] 28:6 29:12	grow [6] 18:8 20:19 32:27	42:5 47:6,15 48:26,27
35:26	39:22 40:14	32:9	40:4 45:1,3	50:17 52:24,26 53:3 57:1
Esq [6] 2:3,8,11,12,16,20	farm [1] 48:28	Friesen's [1] 36:9	growing [1] 45:5	57:21
Estate [1] 3:17	farmer [1] 30:26	Fricsens [1] 42:13	grows [1] 20:25	husband's [1] 41:28
estimate [1] 39:3	farming [2] 26:5 49:7	front [3] 6:16 7:8 40:24	growth [1] 20:17	Hydrocarbons [4] 2:19
estimates [1] 39:10	father [5] 6:8 10:10 33:5	froze [1] 44:26	guess [10] 22:7,9 27:28	47:28 51:7,13
et [2] 1:5,8	35:3 46:3	frustrated [1] 56:12	30:4,17 38:28 39:2 54:24	-I-
etc [2] 11:22 42:7	faucet [3] 9:7 54:1,1	full [2] 37:14 60:4	54:25,28	idea [9] 13:6 14:3 25:10
evenings [2] 52:26 57:15	faucets [1] 9:20	funding [1] 35:23	guy [1] 17:12	27:14 31:5 34:24 36:6
everybody [1] 6:18	February [3] 21:23 24:14	funds [4] 11:10,12 35:26	guys [4] 22:9 37:25 40:28	38:11 57:6
everybody's [1] 6:23	25:24	36:13	51:10	ideas [1] 35:16
Evidently [1] 54:19	fee [3] 6:10,11,12	future [2] 33:21 38:6	-H-	IDENTIFICATION
exact [3] 24:17 36:3	feet [3] 7:27,27 10:6	-G-	half [4] 12:1,4,10 26:27	[5] 22:20 24:10 34:11
46:19	felt [6] 10:10 25:6 30:19	G [1] 1:5	hand [2] 22:17 59:18	45:24 47:13
exactly [2] 28:22 38:3	36:9 42:1,8	GALLIK [1] 2:3	handwriting [1] 55:15	identify [1] 45:27
examination [9] 3:4,5,6	fence [1] 10:15	garage [1] 10:19	HANSON [1] 2:8	identifying [1] 46:2
3:7 4:11,13 45:20 47:26	fertilizer [1] 20:7	garden [12] 10:5,26,27	happening [1] 30:2	IHS [2] 21:22,24
51:23	few [2] 37:20 45:6	11:1,22 17:4 18:2,20	HAUGHEY [1] 2:8	important [1] 49:11
exceed [1] 55:4	field [6] 28:17 29:8 31:25	19:18,18,21 20:6	he'd [1] 30:25	inbetween [1] 19:25
excellent [1] 50:4	33:2 46:12 57:11	garden's [1] 10:5	heads [2] 11:1 44:5	INC [2] 1:8,12
except [4] 15:18,22 56:8	Fifteenth [1] 59:4	gardening [3] 9:28 10:24	health [4] 8:21 13:22	INC. [2] 1:16,17
60:4	figured [1] 42:10	17:24	26:28 53:15	included [1] 39:17
excuse [1] 54:24	figures [1] 24:8	gardens [1] 20:23	hear [4] 29:9,10 31:3	Including [1] 9:28
exhibit [18] 6:17 22:20	film [2] 9:24 15:13	Gas [1] 32:16	57:23	income [5] 43:10 44:10
23:6,7,10 24:10 25:15,16	financial [4] 37:9,21	generally [1] 53:23	heard [13] 28:4,6,13,14	46:25,26,27
34:9,11 36:26 40:24 45:24	46:27 59:16	George [1] 49:25	28:15 29:14 30:25,27 31:8	INDEX [1] 3:1
			31:13,24 32:5 56:4	Indian [2] 8:21 53:15

indicated [3] 52:28 54:7 57:24	20:25 35:15 40:4 50:8	living [4] 14:13,17 48:22 54:20	47:28 49:11 51:26	29:25 45:21 46:8,10 51:24 56:20
indicates [22] 6:11 11:27 12:2 16:4 17:28 19:10,16 20:14,28 22:12 23:23 27:9 29:27 33:14 35:22 37:11 41:9 45:4 48:2 54:9,12 55:7	Kirn [2] 7:5 27:6	located [6] 6:19,22 7:4 8:1 26:26 34:13	MESA [1] 1:11	name's [1] 24:19
informally [1] 39:21	kitchen [8] 11:25 13:17 13:19,28 14:5,9,10,27	location [8] 46:18,19,21 48:19 49:4,22 50:1 51:4	mct [1] 47:10	named [2] 30:26 34:5
information [3] 22:14 37:17 39:23	knew [12] 8:9 10:20 24:26 26:7 30:5 31:15,23 35:19 38:7 49:9,14,15	Loegerings [1] 50:2	Metier [2] 46:6,8	namely [1] 59:7
informed [1] 47:20	knowledge [9] 6:4 19:27 29:6 30:23 36:10 41:28 52:6 53:14,18	longer [1] 47:9	mg [1] 24:3	names [1] 29:13
infrastructure [1] 57:5	knowledgeable [1] 17:3	LONGO [1] 2:12	Michael [1] 2:8	Natural [3] 1:12 2:15 45:22
initial [2] 14:16 21:4	knows [1] 56:27	look [8] 5:3 17:7 20:12 28:26 31:26 38:26 45:7 55:12	might [15] 5:5 13:27 25:19 27:16 29:22 30:8 30:10 31:13,27 42:22 50:17 53:7 57:13,17,25	necessarily [1] 38:13
injuries [1] 33:24	-L-	looked [3] 48:16 49:5 55:12	Mike [1] 51:24	neck [1] 48:12
Inn [2] 1:24 4:3	L [1] 2:20	looking [6] 20:2,9 21:3 32:7 39:11 42:2	mile [2] 26:27,27	need [9] 4:26 27:26,27 38:5 39:1,2 42:3 43:3,19
instance [1] 16:27	Lab [5] 23:10,22,25 24:1 24:12	looks [2] 37:8,20	milage [2] 43:20 52:19	needed [4] 10:10 36:23 39:25 48:11
institutions [1] 5:18	Laboratories [3] 3:14 24:13,16	loop [1] 50:18	miles [4] 7:6 27:7 42:20 43:17	Nees [1] 51:21
intend [1] 34:25	Labs [2] 21:23 55:3	lost [6] 41:23 42:28 43:9 44:10 48:26,26	mind [3] 4:14 31:1,13	neighbors [4] 20:18 28:6 32:9 49:21
interactive [1] 5:19	laid [1] 17:8	lots [1] 56:9	mine [1] 49:9	never [23] 9:10,22 13:11 14:1 15:18,19,26,27 16:8 16:26 17:1 18:6 19:26 28:25 29:28 30:5 41:11 42:24 51:11,19 52:3 56:5 56:6
interest [5] 6:10 46:11 46:11,17 59:17	land [13] 8:9 10:9,11,12 10:18 20:8 32:24,26,28 33:5,21,22 49:6	-M-	Mini-Grant [1] 3:15	new [5] 5:8 14:24,28 15:2 17:2
interrupted [1] 37:5	landscaping [13] 9:28 10:7,8,14,25 17:4,10,18 17:25 34:27 35:20 41:8 54:4	Madison [5] 24:27 28:15 32:3 53:1,8	minimal [1] 9:19	newspaper [1] 56:23
Interstate [1] 2:21	last [14] 18:28 19:2,5,6,19 19:20,27 20:10,15 21:3,8 22:28 23:1 33:18	main [5] 1:24 4:3 32:25 35:21 38:28	minority [1] 38:18	next [2] 18:1 19:15
invest [1] 49:18	law [2] 2:16 36:11	major [3] 13:14 42:20 48:12	missed [2] 37:1 52:8	nice [7] 17:27 18:1,2,6 36:2 44:27 54:6
invested [3] 11:10 18:19 56:13	lawn [2] 17:6 33:17	majority [1] 52:27	missing [1] 37:21	night [4] 20:10 21:3,8 22:28
investigate [2] 17:2 51:2	lawsuit [6] 5:28 30:25 30:27 31:3,9 41:22	manganese [1] 55:4	Missoula [1] 48:5	Ninety-six [1] 17:26
involved [5] 5:27 6:7 29:12,15 35:4	learning [5] 5:12,14,15 5:17 52:25	manner [1] 59:15	mixes [1] 20:7	non [1] 41:5
involving [1] 30:26	leaves [1] 46:5	map [2] 6:17 7:9	mobile [3] 14:13,15,19	Nope [1] 4:15
iron [3] 54:13,16 55:4	Lee [1] 46:6	Marathon [3] 2:10 4:17 32:13	momentarily [1] 37:5	normally [1] 20:26
irrigate [1] 18:25	legal [2] 6:13 40:14	March [3] 36:26 40:8,19	money [15] 10:12,13 11:11,11 18:19 33:4 36:22 37:24 38:25 39:27 40:22 49:18 56:14,17,26	north [24] 2:4,9,17,21 3:15 7:5 8:2 26:26 27:8 28:7,26 29:3 34:5,12,25 40:7,21,27 41:2,11 43:17 46:26 49:25 56:8
issue [2] 51:19 53:27	legislation [1] 56:25	marked [7] 22:19 24:9 34:10 45:23,25 47:12,16	Montana [13] 1:3 2:5,9 2:14,18,22 4:4,6 5:26 59:2 59:6 60:13,14	Notarial [1] 59:19
issues [3] 49:28 52:2 53:13	less [2] 25:8 33:6	market [1] 42:24	month [1] 44:2	Notary [4] 4:6 59:5,21 60:13
it'd [1] 19:9	letter [2] 22:18,22	married [4] 7:2 46:7,7,8	months [4] 24:12,23 25:9 26:16	notation [1] 55:15
items [1] 36:5	letters [1] 55:21	Martell [1] 30:24	morning [1] 21:9	notations [1] 15:20
itself [1] 21:2	Lien [1] 30:26	MATHER [1] 2:12	most [3] 4:21 12:10 55:12	note [1] 55:16
-J-	life [1] 32:26	matter [1] 19:2	Mostly [1] 29:3	noted [1] 4:5
J [1] 2:3	lifetime [3] 56:25 57:1,3	matters [1] 59:9	mother [4] 7:1,3,6 48:24	notes [2] 21:21 59:14
Jack [1] 1:10	line [3] 16:4 38:3 61:5	maximum [1] 55:5	Motor [2] 1:24 4:3	nothing [1] 59:8
January [1] 25:24	listed [1] 60:5	may [10] 8:26 11:17,21 11:26 12:18,20 13:21 15:7 22:14 46:17	MOULTON [1] 2:12	notice [9] 5:2 9:24 12:8 13:15,19 14:11 15:13,15 17:24
jeopardize [1] 13:22	liter [1] 24:3	mean [18] 11:24 29:11 30:20,23 33:2 38:15,21 39:12,18 40:2 41:4 42:19 44:25 45:7 48:26 54:1 55:20,24	move [15] 26:7 27:21 33:8 33:9 39:13 40:12 48:9 49:3,9,17,28 50:25 51:3 55:13 56:18	noticed [9] 11:18,19,23 12:9,17 15:23 33:26 54:24 54:25
Jerry [1] 22:1	live [4] 6:26 43:16 48:3 49:19	means [2] 55:27 59:11	month [1] 44:2	November [19] 6:15 8:6 9:1,2 10:22 12:21 17:20 21:22,26 22:25 24:13 25:23,28 26:1 40:20 48:20 48:22 49:4 50:20
Joanna [6] 22:18,24 23:15,20,27 24:4	lived [14] 7:1,3,11,13,16 11:28 14:21,26 30:21 34:17 45:16 47:28 48:4 48:24	meant [2] 55:23,25	moving [1] 53:16	now [14] 14:17 15:14 17:11,14 20:10 21:19 30:22 33:6 34:4 38:6
job [4] 17:11 38:22 48:14 48:16	lives [4] 7:5,6 48:25 49:20	member [2] 6:28 34:22	MT [1] 1:24	
John [4] 1:20 2:16 22:3 45:21	livestock [7] 10:16 15:18 15:26 16:3,9,18 25:1	members [3] 5:27 55:28 57:17	Murphy [9] 1:8 2:7,12 30:25 51:10,19,25,27 52:4	
Judge [1] 1:10		memory [1] 31:28	must [2] 12:23 45:8	
Judicial [1] 59:5		mentioned [5] 27:20,23	-N-	
June [3] 1:23 4:2 59:19			name [9] 4:16 6:18 27:5	
-K-				
keep [1] 54:11				
Ketterer [1] 2:4				
kind [7] 5:14 10:1 13:8				

39:28 41:22 53:22 56:16 number [4] 24:3 51:5 52:28 55:2, numbers [1] 25:17 numerous [1] 22:15	own [9] 6:7,11 18:16 25:2 27:20 33:5 34:23 36:13 55:28 owned [1] 52:15 Owner [1] 3:16 owners [1] 34:19 ownership [1] 6:6	17:2 place [4] 1:24 15:21 36:3 54:7 places [2] 39:5,24 plaintiffs [5] 1:6,13,14 2:2 6:2 plan [15] 11:7 34:7 35:18 36:1,19,25,26 37:1,3,15 37:24 38:7,13 40:1 41:16 planned [1] 17:10 planning [1] 49:3 plant [1] 20:6 plants [13] 18:5,11,13 19:4 20:10 33:19,20 35:9 35:13 40:3,4 44:6 47:23 plastic [1] 16:28 Plaza [1] 2:13 plumber [1] 17:1 plumbing [1] 14:25 plus [1] 35:13 pocket [2] 43:12 44:8 point [8] 1:24 4:3 9:10 9:23 11:3 12:25 36:9 57:18 points [1] 23:2 Poly [1] 47:8 poor [1] 32:21 Poplar [15] 7:7 29:8 36:8 38:10 43:17 46:12 48:9 48:15,25 49:16,16 52:13 52:16 54:26 56:7 Portland [1] 48:6 positions [1] 48:18 positive [5] 24:17 28:1 28:16,28 55:19 possession [2] 21:7 55:8 possibility [3] 28:27 30:1,5 possibly [5] 15:19 30:9 30:19 33:10 42:6 posts [1] 10:15 potable [9] 8:10,23 25:26 26:2,8 33:10 44:20 49:12 50:23 potato [2] 20:10,13 potatoes [2] 18:11 20:1 precaution [1] 54:28 preparation [2] 20:6 21:10 prepare [1] 37:3 prepared [1] 37:1 prepares [1] 20:8 preparing [1] 31:18 PRESENT [1] 2:23 pretty [9] 4:21 19:3 21:3 24:16 29:17,19 44:19 45:15 52:26 primarily [1] 35:20 problem [4] 54:13,13,19 54:20 problems [6] 10:3,4 22:27 30:11 48:12 57:25	proceedings [2] 4:7 59:12 process [1] 4:20 produce [2] 18:21 32:27 produced [2] 21:12 22:9 18:28 46:12 profession [2] 48:11,13 professional [1] 5:21 profitable [1] 35:9 program [2] 5:23 35:26 programs [1] 5:18 projections [2] 37:6 42:4 pronounce [2] 42:13 46:8 proper [1] 56:20 property [50] 6:6,14,24 7:8,13,14,18,20,22,24 8:3 8:5,12,14,16 9:5 10:20 11:28 14:21 15:22 16:6 18:9 20:3 25:28 26:2,5,7 26:10,13 27:7 28:18,21 28:23 29:2,5,22 33:4,9 34:15,18 40:2 42:28 43:9 44:17 45:16 46:2,5 49:18 53:17 55:13 property's [2] 6:6 33:6 provide [1] 18:20 provided [3] 34:4 53:22 53:26 PRUDENTIAL [1] 1:17 Public [4] 4:6 59:5,21 60:13 pulling [1] 20:11 pump [1] 44:7 purchase [1] 36:4 purpose [1] 57:24 PURPOSES [5] 22:20 24:10 34:11 45:24 47:13 pursue [1] 41:15 put [33] 6:18 10:4,7,13,13 10:16,19,27 15:17,25,27 15:27 16:1,27 17:12,17 18:13 23:20,27 33:3 35:28 36:13,16,22 37:24 40:2 41:22 43:27 44:16,16,21 54:5,7 puts [1] 20:7 putting [1] 11:22	quit [4] 15:7 16:15 43:23 45:5 -R- rain [2] 19:20,27 rainfall [2] 19:19,22 rains [1] 19:4 ran [3] 16:4 24:20 27:10 ranching [1] 48:28 Ray [2] 52:1,2 re [1] 18:22 react [1] 18:14 read [7] 31:4 47:18,19 55:17 56:23 60:2 61:5 reading [1] 23:28 readings [1] 23:21 ready [1] 48:10 real [4] 13:24 20:2,12 44:9 really [13] 10:9,10 11:20 11:24 15:19 30:5 33:26 35:19 36:11 42:2,4 44:14 44:27 reason [3] 27:23 54:10 61:5 receive [1] 5:3 received [5] 8:17 35:26 40:22 47:21 55:9 recently [3] 15:14 34:4 54:26 recognize [2] 22:21 23:11 recognized [1] 54:20 recommendations [1] 55:5 record [10] 6:20,21 21:17 21:18,19 24:4 25:11,13 45:26 60:4 recorder [1] 59:11 Reede [1] 52:1 reference [2] 23:15 56:1 referencing [2] 22:24 23:3 reflect [1] 46:26 regarding [1] 47:21 Reginald [1] 3:17 related [2] 6:2 59:15 relation [1] 7:24 relevant [1] 5:6 remember [3] 16:1 22:1 55:2 Rene [1] 30:24 replace [4] 10:28 14:19 16:27 44:5 replaced [1] 9:22 report [12] 22:5 27:17 29:24,26 30:12 31:16,18 31:20 50:9 53:9 55:3,8 reported [1] 59:11 Reporter [9] 3:8 4:5 22:19 24:9 34:10 45:23 47:12 59:4,10
oasis [4] 33:2,13,16 56:14 oath [2] 4:12,22 Objection [1] 26:17 occasions [2] 53:4 57:22 occupation [1] 5:11 October [1] 8:4 odor [9] 9:14 12:24,25,28 13:14,19,23 15:2,11 off [8] 6:20 18:18,18 21:16,18 25:11,13 38:15 offensive [3] 11:20,24 32:2 office [5] 34:14 50:27 53:4,6 57:19 offices [1] 53:12 Official [3] 4:5 59:4,10 often [1] 12:14 oil [18] 1:8 2:10 4:16,17 28:17 29:1,8,21 30:6,8,9 30:20,26 31:9 32:13,16 46:12,12 old [5] 10:17 14:15 15:1 31:28 56:15 older [1] 14:23 once [3] 38:14 42:7 49:9 one [30] 7:23 11:25 12:25 14:7,28 17:1 19:13 20:13 21:4 22:3,15,25,25,28 27:11 33:3 36:8,9 44:28 45:6,6 50:7 51:5,10 52:19 55:1,10,11,11,12 onions [1] 18:12 onto [9] 8:5,11,16 26:2,7 26:10,13 44:17 53:17 open [1] 33:28 opened [1] 36:21 operable [1] 41:2 operated [1] 32:19 oral [1] 4:1 orange [1] 9:18 order [2] 3:17 36:23 ordering [2] 39:6,9 Oregon [3] 35:3 40:10 40:12 Organization [1] 38:21 original [3] 14:19,25 59:13 originally [1] 61:4 ours [1] 51:10 ourselves [1] 17:8 out-stock [1] 16:5 outcome [1] 59:17 outlay [1] 38:27 outset [3] 53:16 54:19,21	-O- P [1] 2:11 P.C [3] 2:3,12,16 P.M [1] 58:1 P.O [4] 2:5,13,17,22 pack [1] 18:19 packing [1] 44:25 page [9] 3:3,12 23:1,9,16 23:24 40:24 46:5 61:5 pages [2] 37:9,20 paint [1] 54:17 pamphlets [1] 38:2 papers [2] 24:16 31:4 part [6] 4:21 36:26 37:12 37:13 40:1 41:19 participate [1] 57:3 particular [11] 9:10,23 9:25 13:3,18 20:16 27:19 38:8 46:17,18 49:7 partnership [5] 11:8 36:21 40:10,15 41:4 parts [2] 44:4 47:18 party [3] 1:13,18 59:16 passed [4] 6:8 46:3 51:21 56:26 past [1] 41:28 pasture [1] 28:26 Peck [4] 5:13 49:2 52:14 56:19 people [10] 11:16 20:21 20:22 27:26 29:11 30:21 36:4 39:21 49:15 53:16 per [1] 24:3 percentage [1] 11:2 perform [1] 41:7 performed [3] 9:1 21:1 24:20 period [1] 24:28 periodically [1] 5:10 personally [1] 53:2 personnel [1] 57:10 Petroleum [4] 1:11,17 51:7,12 phone [1] 37:4 physical [1] 33:24 picture [1] 27:26 picce [1] 49:7 pile [1] 22:13 Pioneer [5] 1:11 2:15 21:27 22:3 45:21 pipeline [3] 56:22,26,28 pipes [4] 9:20 15:1 16:25	-P- planned [1] 17:10 planning [1] 49:3 plant [1] 20:6 plants [13] 18:5,11,13 19:4 20:10 33:19,20 35:9 35:13 40:3,4 44:6 47:23 plastic [1] 16:28 Plaza [1] 2:13 plumber [1] 17:1 plumbing [1] 14:25 plus [1] 35:13 pocket [2] 43:12 44:8 point [8] 1:24 4:3 9:10 9:23 11:3 12:25 36:9 57:18 points [1] 23:2 Poly [1] 47:8 poor [1] 32:21 Poplar [15] 7:7 29:8 36:8 38:10 43:17 46:12 48:9 48:15,25 49:16,16 52:13 52:16 54:26 56:7 Portland [1] 48:6 positions [1] 48:18 positive [5] 24:17 28:1 28:16,28 55:19 possession [2] 21:7 55:8 possibility [3] 28:27 30:1,5 possibly [5] 15:19 30:9 30:19 33:10 42:6 posts [1] 10:15 potable [9] 8:10,23 25:26 26:2,8 33:10 44:20 49:12 50:23 potato [2] 20:10,13 potatoes [2] 18:11 20:1 precaution [1] 54:28 preparation [2] 20:6 21:10 prepare [1] 37:3 prepared [1] 37:1 prepares [1] 20:8 preparing [1] 31:18 PRESENT [1] 2:23 pretty [9] 4:21 19:3 21:3 24:16 29:17,19 44:19 45:15 52:26 primarily [1] 35:20 problem [4] 54:13,13,19 54:20 problems [6] 10:3,4 22:27 30:11 48:12 57:25	proceedings [2] 4:7 59:12 process [1] 4:20 produce [2] 18:21 32:27 produced [2] 21:12 22:9 18:28 46:12 profession [2] 48:11,13 professional [1] 5:21 profitable [1] 35:9 program [2] 5:23 35:26 programs [1] 5:18 projections [2] 37:6 42:4 pronounce [2] 42:13 46:8 proper [1] 56:20 property [50] 6:6,14,24 7:8,13,14,18,20,22,24 8:3 8:5,12,14,16 9:5 10:20 11:28 14:21 15:22 16:6 18:9 20:3 25:28 26:2,5,7 26:10,13 27:7 28:18,21 28:23 29:2,5,22 33:4,9 34:15,18 40:2 42:28 43:9 44:17 45:16 46:2,5 49:18 53:17 55:13 property's [2] 6:6 33:6 provide [1] 18:20 provided [3] 34:4 53:22 53:26 PRUDENTIAL [1] 1:17 Public [4] 4:6 59:5,21 60:13 pulling [1] 20:11 pump [1] 44:7 purchase [1] 36:4 purpose [1] 57:24 PURPOSES [5] 22:20 24:10 34:11 45:24 47:13 pursue [1] 41:15 put [33] 6:18 10:4,7,13,13 10:16,19,27 15:17,25,27 15:27 16:1,27 17:12,17 18:13 23:20,27 33:3 35:28 36:13,16,22 37:24 40:2 41:22 43:27 44:16,16,21 54:5,7 puts [1] 20:7 putting [1] 11:22 -Q- qualified [1] 59:5 quality [22] 11:2 12:18 13:15,28 17:6 21:2 24:27 25:6,25 27:19,22,24 30:3 31:2 32:7,22,26 39:8 40:5 49:28 50:19 51:3 quantity [1] 46:14 questions [7] 4:26 45:18 47:25 52:8 56:9 57:9,28 quick [2] 44:9 57:9	

Index Page 6

town [6] 7:6 30:23 36:12 43:16,18 47:3 trace [1] 27:3 trailer [10] 8:16 14:16,23 14:23,24,25 15:1,3 16:25 17:2 training [1] 5:23 transcript [1] 60:3 transcription [1] 59:13 travel [4] 12:12 35:11 42:19 52:16 travelling [1] 11:13 treatment [4] 44:15,17 44:21 45:10 tree [4] 6:5 11:14 34:28 35:11 tremendously [1] 17:7 trial [1] 4:25 Tribal [4] 31:7,25 54:25 54:27 Tribally [1] 52:15 Tribe [5] 31:7 32:4 35:25 53:12 56:25 Tribes [2] 48:28 49:2 trimming [2] 11:14 34:28 truc [2] 59:13 60:4 truth [4] 4:24 57:14 59:8 59:8 trying [4] 6:5 18:14 27:25 33:12 tubs [2] 13:25 14:9 Tuesday [1] 1:23 turn [1] 54:18 turned [1] 33:2 turning [2] 9:7 54:1 twice [2] 17:1 22:15 two [14] 14:22 22:24 23:3 23:16 24:12,22 25:23 26:9 26:15,24 33:19 39:24 41:11 42:10 type [2] 13:7 35:9	up [16] 6:27 7:2 17:12 20:2,25 24:1 31:6 33:22 39:27 42:8,10,11 44:2 48:6 51:19 56:8 USA [2] 1:8,12 used [2] 9:26 13:11 uses [3] 9:26,27 18:16 USGS [11] 21:24,25,26 22:25 23:22 27:12,17 29:26 31:15,17 57:10 using [2] 12:8 25:2 utilize [1] 41:4 utilizing [1] 54:3	week [1] 17:13 well's [1] 27:28 wells [8] 7:22 27:3,27 32:18 46:15,16,17,18 west [2] 8:2 48:25 WESTDALE [1] 1:16 wheat [3] 10:17 26:6 33:1 Whitmer [13] 1:15 2:24 3:2 4:2,10 47:9 56:1,4 59:7 60:2,9 61:3,21 WHITNEY [1] 2:20 whole [4] 27:25 32:23 44:11 45:15 wishes [1] 61:3 without [1] 48:16 witness [2] 59:16,18 Wolf [3] 1:24 4:3 36:9 Wollaston [1] 22:1 woman [1] 38:19 wondered [1] 55:28 wonderful [1] 9:7 wondering [1] 52:20 worked [7] 10:9 31:7 35:7 49:1 51:18,18,20 workings [1] 38:14 works [1] 4:20 workshops [1] 5:21 worse [1] 56:17 worth [1] 33:6 written [1] 55:17 wrong [1] 23:28
-V-	vacuum [1] 18:19 vague [1] 38:17 value [2] 42:28 43:9 vegetables [1] 44:24 vegetation [1] 47:22 versus [3] 13:17,28 14:7 visit [2] 11:21 57:12 visited [2] 52:2,4 visiting [1] 24:28 vs [3] 1:7,15,19	
-W-	waited [1] 8:6 Walker [1] 2:16 wants [1] 33:8 Warren [5] 2:24 7:1,16 10:27 12:10 wash [1] 45:14 water [133] 3:13,14 7:22 8:10,23,24,26 9:4,7,8,24 10:21 11:3,18,23 12:18 12:28 13:1,10,12,16,20 13:24,27 15:4,13,21,22 15:23,25 16:2,3,6,8,15,24 18:25 19:16,24 21:1,6,12 21:14,20,25 23:10 24:26 25:5,6,24,26,27 26:2,8,12 27:19,22,24 29:22 30:3,3 30:11,21,22 31:2,10 32:2 32:7,22 33:3,10,25 39:8 40:3,5 43:15,16,18,20,20 43:23,27,28 44:7,15,17 44:20,21 45:10,13 49:10 49:12,16,17,27 50:4,8,10 50:15,19,22,27 51:2,8,11 51:15,19 52:2,5,20,20,22 52:23 53:12,17,21,22,26 53:28 54:2,3,14,16 55:5 55:23,25 56:17,19,20,22 57:4,19,25	
-Y-	yards [1] 11:16 year [26] 11:7 12:1,3,10 17:1,27 18:1,13,21 19:2,5 19:19,20,22,27,28 20:7,9 20:15 33:15 38:7,13 40:1 45:5,6,6 years [17] 6:27 7:12 10:9 11:17 14:22 19:1,25,26 30:22,26 31:13,14 35:8 38:12 40:11 41:11 56:15 yellow [3] 9:21 17:15 54:18 yesterday [1] 30:24 yct [3] 21:13 41:20 56:27 YOUPEE [1] 1:5 yourself [4] 5:28 16:15 34:19 37:25	
-U-	um-hm [27] 11:27 12:2 16:4 17:28 19:10,16 20:14 20:27 22:12 23:19,23 27:9 29:27 33:14 35:22 37:11 41:9,24 43:24 45:2 47:5 48:2 54:9,9,12 55:7,7 Um-m [1] 27:2 under [2] 4:22 30:18 underground [3] 10:4 10:28 33:3 understand [5] 4:19,22 4:27,28 12:19 understandable [1] 22:17 unfortunately [1] 52:7 unit [1] 43:28 UNITED [1] 1:2 unless [2] 36:28 49:19	water's [1] 39:27 watered [1] 19:17 waterer [5] 15:16,17 16:5 16:27 44:4 watering [1] 54:23 Webster [6] 2:8 3:7 21:19 51:23,24 57:27 weeds [1] 20:11